

*Town of Falmouth, MA
Friday, July 2, 2021*

Chapter 240. Zoning

[HISTORY: Adopted by the Town of Falmouth Annual Town Meeting 4-2-1979, Art. 101.
Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. **95**.

Wetlands protection — See Ch. **235**.

Planning Board regulations — See Division 3.

Health regulations — See Division 4.

Wetlands regulations — See Division 4.

ATTACHMENTS

Attachment 1 - Table of Zoning Map Amendments 

Article I. General Provisions

§ 240-1. Purpose.

The purpose of this chapter is to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water supply, drainage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the Town, including consideration of the recommendations of the Master Plan, if any, adopted by the Falmouth Planning Board and the Comprehensive Plan, if any, of the Cape Cod Planning and Economic Development Commission; and to preserve and increase amenities, pursuant to Chapter 40A, 40B and 41 of the Massachusetts General Laws, as amended, and Article 89 of the Amendments to the Constitution.

§ 240-2. Applicability of other laws.

This chapter is supplementary of other laws and bylaws affecting the use, height and area of buildings and structures and the use of the premises. Where this chapter or any portion thereof imposes a greater restriction than is imposed by other regulations, permits, easements, covenants or other provisions of law or bylaws, the provisions of this chapter shall control.

§ 240-2.1. Exempt uses.

[Added STM 10-2-1990, Art. 4, approved 1-9-1991]

- A. This chapter shall not prohibit, regulate or restrict the use of the land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination or by a

nonprofit educational corporation. However, such land or structures shall be subject to the regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements found in the Falmouth Zoning Bylaw, unless, by special permit, the Planning Board grants relief from these dimensional regulations as applied to exempt uses, subject to the criteria set forth in Article **XLII**.

- B. Notwithstanding the foregoing, no such regulations shall apply to any structure for which a building permit has been issued prior to the first notice of a public hearing on this provision, provided that construction commences within six months after the issuance of the permit and is thereafter continued through to completion as continuously and expeditiously as is reasonable, provided further, however, that if such building permit is renewed, such six-month period shall be extended for the renewal periods, but not more than 12 additional months, and provided further that no design changes occurring after the initial issuance of the building permit shall increase the intensity of the development of the building to which the building permit relates.

§ 240-3. Preexisting structures and uses.

- A. Except as hereinafter provided, this chapter shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the date of the first publication of notice of the public hearing on such bylaw required by MGL C. 40A, § 5. Anything to the contrary in the zoning bylaw notwithstanding, the residential use of two or more dwellings on a single lot shall be deemed a preexisting nonconforming use if commenced prior to May 19, 1959, and may only be altered, extended or modified by special permit pursuant to this section provided the Board of Appeals finds through a preponderance of credible evidence that said use commenced prior to May 19, 1959, and has not been abandoned or not used for a period of two years or more. In approving any alteration, extension or modification the Board of Appeals shall require that the number of dwelling units shall be limited to the same as in existence on May 19, 1959.

[Amended ATM 4-5-2010, Art. 9, approved 7-14-2010]

- B. Noncomplying structures 10 years or older. In accordance with MGL C. 40A, § 7, a structure, which has not been in compliance with this chapter, or with the conditions set forth in any special permit or variance affecting the structure, for a period of 10 years or more from the commencement of the violation may not be the subject of any enforcement action by the Town to compel the removal, alteration or relocation of such structure. Structures which qualify under MGL C. 40A, § 7, are considered to be nonconforming structures and are entitled to treatment as such as provided in this section.

[Added ATM 4-3-1990, Art. 18]

- C. Preexisting, nonconforming structures or uses may be extended, altered or changed only by special permit from the Board of Appeals. Any such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure.

[Amended STM 10-7-1986, Art. 66]

- (1) Recognizing the need to provide some guidelines for determining relative detrimentality, and recognizing there are basic and consistent principles of zoning which are broadly accepted, the following standards shall apply to the granting of a special permit:

(a) The standards of § **240-216**.

(b) The change or alteration of the structure or use may be allowed as maintaining or lessening any nonconformity without having to meet existing dimensional requirements. However, the extension of a structure may be considered a detriment after the Board of Appeals considers whether the extension extends or creates a new dimensional nonconformity, impairs views or vistas or does not reasonably conform to

the average dimensions found in the neighborhood.

- (c) Where the proposed use is regulated by other sections of this chapter, the applicable standards of those sections shall also be considered in determining whether the proposal is substantially more detrimental.
- (2) Exempted from the requirement for a special permit are the following:
- (a) Alteration, reconstruction, extension or structural change (collectively "alteration") to a nonconforming single- or two-family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted by right under the following circumstances:
[Amended ASTM 4-4-1994, Art. 9, approved 7-9-1994]
 - [1] Normal repairs or replacement of parts of any nonconforming structure, provided that such repair or replacement does not constitute an extension of a nonconforming use of such structure.
 - [2] Alteration to a conforming structure where the alteration will also comply with all applicable sections of the zoning bylaws in effect at the time of application, if the existing structure is located on a lot which is nonconforming as the result of a zoning change.
 - [3] Alteration within the existing footprint of a nonconforming structure to comply with requirements of the Massachusetts Building Code.
 - [4] Alteration to a nonconforming structure where the alteration will comply with all applicable sections of the zoning bylaws in effect at the time of application and will not increase the habitable space.
 - [5] Alteration to a nonconforming structure on a lot of at least 20,000 square feet, where the alteration will comply with all applicable sections of the zoning bylaw in effect at the time of application, including, but not limited to setback, yard, building coverage and height requirements.
 - [6] In cases where the applicant seeks to increase the height of any structure that encroaches on a required setback, where any increase in height will occur within such encroachment, there shall be no alteration as of right under this section.
 - (b) Interior alteration of any otherwise conforming structure which does not change the nature of, nor increase the intensity of, a nonconforming use, and interior alterations of preexisting nonconforming structures for a use or uses which are otherwise allowed by zoning.
[Amended STM 10-7-1986, Art. 66]
 - (c) Reconstruction of a legally nonconforming structure damaged or destroyed by fire or other accidental or natural cause, other than flood damage sustained to structure within Zones A and V Floodplains shown on the Flood Insurance Rate Maps of Falmouth, if the reconstruction is substantially the form it had at the time of damage or destruction, or in any form if within applicable setback requirements and not larger than previously, and if reconstruction is started within 24 months and completed within 36 months of the damage or destruction.
[Added ATM 4-4-1979, Art. 102; amended STM 10-7-1986, Art. 66]
 - (d) Reconstruction of any permitted commercial accommodation structure or unit(s), if for the purpose of rehabilitation, upgrade, and if the commercial accommodation was licensed and operational for the three years prior to the rehabilitation upgrade. The

reconstruction will not allow rebuilding at a greater density, greater height or at a different location than previously existed.

[Added ATM 4-7-1982, Art. 53]

- (e) Not exempted under this subsection are accessory uses and structures.

[Added STM 10-7-1986, Art. 66]

- D. Any nonconforming use which has been abandoned or not used for two years or more loses the protection of Subsection **A** and shall be required to conform to the current bylaw.

[Amended STM 10-14-1987, Art. 49; AFTM 11-17-1992, Art. 2, approved 2-3-1993]

- E. Residential use amnesty. Within three years from the effective date of this bylaw, an owner of a lot with one or more structures containing dwelling units which do not comply with the Zoning Bylaw may apply for a special permit to establish such units as lawfully nonconforming where the Board of Appeals determines by a preponderance of credible evidence that such noncompliance has been continuous since January 1, 1994, without any lapse for a period of two years or more; the provisions of § **240-216** shall also apply.

[Added ATM 4-7-2014, Art. 8, approved 5-13-2014]

- (1) The determination of the office of the Building Commissioner or his designee stating what repairs or upgrades, if any, shall be required for occupancy pursuant to the special permit under this section shall accompany the special permit application and any repairs or upgrades determined as necessary shall be a condition of the special permit;

- (2) Any special permit issued under this amnesty program shall also provide:

- (a) That the subject property shall be served by the municipal sewer or an on-site waste disposal system that conforms to the State Sanitary Code as determined by the Health Department;

- (b) As a condition of the special permit, a deed restriction, covenant or other suitable instrument, acceptable to and enforceable by the Town, shall be recorded with the land records that restricts the leasing of any dwelling unit(s) allowed by this special permit, beyond the units allowed by right in the particular zoning district, to households with an income 80% or less of the Barnstable County median income as determined by the most recent federal census or other method acceptable to the Board of Appeals and further at a gross annual rent not to exceed 30% of the median income herein described. The property owner shall provide to the Board of Appeals documentation that certifies the income level and rent paid by the tenant on a yearly basis;

- (c) The number of units allowed by this special permit may not exceed those in existence for at least 20 years without a lapse of two years or more, and no subsequent modification of the special permit shall allow additional units or conversion to a nonresidential use;

- (d) No special permit granted under this section may be used for commercial accommodations or summer rentals.

§ 240-4. Previously issued permits.

[Amended AFTM 11-6-2017, Art. 14, approved 2-12-2018]

Construction or operation under a building permit or special permit must conform to any subsequent amendments of this chapter unless the use or construction is commenced within a period of twelve months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion continuously and expeditiously.

§ 240-5. Existing structures.

[Added ATM 4-7-1981, Art. 42]

Any residential structure in existence as of January 1, 1970, not protected by § **240-3**, will be deemed to be conforming to the dimensional requirements of these bylaws, but any alteration, reconstruction, extension or structural change must conform to the current bylaw dimensional requirements.

Article II. Building Permit Moratoria

[Added 4-4-2011 ATM, Art. 8, approved 7-19-2011^[1]]

[1] *Editor's Note: This article also repealed former Art. III, Building Permit Location, added ATM 4-9-1987, Art. 53, as amended.*

§ 240-6. through § 240-9. (Reserved)

§ 240-10. Moratorium on permits for windmills.

[Amended ATM 4-2-2012, Art. 7, approved 7-17-2012]

The provisions of the Zoning Bylaw to the contrary notwithstanding, no building permit or special permit for the construction of a windmill, as defined, shall issue until May 1, 2013, or until this article is repealed by a vote of Town Meeting, whichever occurs first. The purpose of this article is to provide the time necessary to study noise, vibration, shadow and other issues associated with the location of this use near residential neighborhoods.

§ 240-11. Medical marijuana treatment centers.

[Added ATM 4-8-2013, Art. 1, approved 4-23-2013]

The provisions of the Zoning Bylaw to the contrary notwithstanding, no building permit or special permit for the construction of a medical marijuana treatment Center, as defined, shall issue until April 30, 2014, or until this article is repealed by a vote of Town Meeting, whichever occurs first. The purpose of this article is to provide the time necessary to undertake a planning process to address the potential impacts of medical marijuana in the Town, review guidance from the Commonwealth regarding medical marijuana treatment centers and consider the adoption of new zoning bylaws regarding the operation and location of medical marijuana treatment centers. "Medical marijuana treatment center" shall mean: an establishment that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana or products containing marijuana and/or related supplies or educational materials to qualifying patients or their personal caregivers, for ostensibly medical purposes.

§ 240-12. (Reserved)

Article III. Definitions

§ 240-13. Terms defined.

In this chapter, the following terms shall have the following meanings unless a contrary meaning is required by the context or specifically prescribed.

ACCESSORY BUILDING

A building such as a garage or shed, located on the same lot with, and accommodating a use accessory to, the principal permitted use of the premises.^[1]

ACCESSORY USE

A use of land or building on the same lot with, and customarily incidental but secondary to, a permitted use except that if more than 30% of the floor area or 50% of the lot area is occupied by such use, it shall no longer be considered "accessory."

[Amended ATM 4-5-1983, Art. 44]

ADULT BOOKSTORE

An establishment having as a substantial or significant portion of its stock-in-trade, books, magazines and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31. For purposes of this bylaw, "a substantial or significant portion of its stock" refers to a minimum of 15% of the total stock as determined by the Building Commissioner.

[Added ASTM 4-7-1997, Art. 11, approved 7-1-1997]

ADULT DANCE CLUB

An entertainment establishment which permits a person or persons to perform in a state of nudity as defined by MGL c. 272, § 31, or an establishment which displays live entertainment which is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

[Added ASTM 4-7-1997, Art. 11, approved 7-1-1997]

ADULT MOTION-PICTURE THEATER

An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

[Added ASTM 4-7-1997, Art. 11, approved 7-1-1997]

ADULT PARAPHERNALIA STORE

An establishment having as a substantial or significant portion of its stock devices, objects, tools or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272, § 31. For purposes of this bylaw, "a substantial or significant portion of its stock" refers to a minimum of 15% of the total stock as determined by the Building Commissioner.

[Added ASTM 4-7-1997, Art. 11, approved 7-1-1997]

ADULT USES

An adult bookstore, an adult motion-picture theater, an adult dance club, an adult paraphernalia store, an adult video store and such other uses as provided by MGL c. 40A, § 9A.

[Added ASTM 4-7-1997, Art. 11, approved 7-1-1997]

ADULT VIDEO STORE

An establishment having as a substantial or significant portion of its stock-in-trade, videos, movies or other film material which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31. For purposes of this bylaw, "a substantial or significant portion of its stock" refers to a minimum of 15% of the total stock as determined by the Building Commissioner.

[Added ASTM 4-7-1997, Art. 11, approved 7-1-1997]

AFFORDABLE DWELLING UNIT

A dwelling unit that complies with 760 CMR 56, or successor regulations regarding unit inclusion on the subsidized housing inventory.

[Amended STM 10-24-1989, Art. 66; ASTM 4-13-1998, Art. 15; AFTM 11-9-2009, Art. 11, approved 2-5-2010]

AGRICULTURE

Includes farming in all its branches, generally as the cultivation and tillage of the soil, dairying, the production cultivation, growing and harvesting of any agricultural, floricultural, viticultural or horticultural commodities, and shellfishing, including preparations and delivery to storage or to market or to carriers for transportation to market.

[Added ATM 4-7-1986, Art. 100]

ALTERATION OF THE LAND FORM

Any man-made change in the existing character of the land including filling, grading, paving, dredging, mining, excavation or drilling operations other than routine excavation, well-drilling, backfilling, grading and paving incidental to the construction of a residence or other structure for which a building permit has been issued.

AUTOMOBILE REPAIR SHOP

A repair shop for motor vehicles utilizing power-driven machinery, welding equipment, paint sprayers and other comparable equipment.

BASE FLOOD ELEVATION LEVEL

The level to which coastal waters may rise under the effect of wind, tide and hurricane surge.

"Base flood" means the flood having a one-percent chance of being equaled or exceeded in any given year. "Base flood elevation levels" are measured in feet above mean sea level.

BILLBOARD

Any off-premises sign greater in area than 40 square feet.

BOARDINGHOUSE

A lodging house in which meals are served, for compensation, to the guests, or others.

BREAKAWAY WALLS

Any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material, which are not part of the structural support of the building and which are so designed as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by floodwaters.

BUILDING AREA

The aggregate of the maximum horizontal cross-section area of the building on a lot excluding cornices, eaves, gutters or chimneys projecting not more than 24 inches, steps, one-story open porches and balconies and terraces, but including accessory buildings.

[Added ATM 4-5-1988, Art. 48]

BUILDING HEIGHT

For community service uses and public buildings, "building height" is defined as the vertical distance from the mean level of natural grade across the actual building line, across all street sides of the proposed building to the highest point of the roof or parapet for flat or shed roofs, to the deckline for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs, and such measurement to be based on the elevation of the lot in its natural state prior to construction, grading or filling. For all other buildings, "building height" is defined as the vertical distance from the mean level of natural grade across the actual building line across all street sides of the proposed building to the highest point of the roof or parapet for flat or shed roofs, to the deckline for mansard roofs and to the ridge for gable, hip and gambrel roofs, with such measurement to be based on the elevation of the lot in its natural

state prior to construction, grading or filling. Height limitations shall apply to any extensions of the structure that are integral to the habitable space, regardless of the square footage of the extension. Height limitations shall not apply to television antennas, chimneys, spires or minor extensions of the structure strictly ornamental in nature.

[Amended STM 10-17-1984, Art. 43; ATM 4-7-1986, Art. 71; ATM 4-5-1988, Art. 47]

CAMPGROUND

Premises used for recreational camping, subject to regulations under Article **VIII** of the State Sanitary Code, in which mobile homes (as distinct from travel trailers) are not accommodated.

COMMERCIAL ACCOMMODATIONS

Premises for rental to transient guests, including boarding, lodging or tourist home, motel, hotel or inn.

[Amended STM 11-15-1983, Art. 44]

COMMON DRIVEWAY

A vehicular way, which is not a street, providing access to three or more residential, industrial or commercial lots.

[Added AFTM 11-17-1997, Art. 6, approved 2-27-1998]

COMMUNITY DOCK

A single pier, dock and/or float located on a recreation or open space lot in a subdivision approved by the Planning Board pursuant to Article **XXV**, Planned Residential Development, having a common right of use by the association of homeowners having common rights of interest in the open space or recreation lot and which is used by the property owners for loading and unloading of passengers and/or cargo and the tying of dinghies.

[Added ASTM 4-5-1993, Art. 9, approved 7-16-1993]

CONTRACTOR'S YARD

Premises used by a building or construction contractor or subcontractor principally for storage of equipment and supplies, fabrication of subassemblies and parking of wheeled equipment.

CUL-DE-SAC

A dead-end street with a turnaround at the closed end having an outside street radius of no more than 60 feet.

[Added AFTM 11-17-1998, Art. 3, approved 2-25-1999]

DAY-CARE SERVICES

[Added ATM 4-5-1988, Art. 48]:

A. CHILD DAY-CARE CENTER

- A place licensed by the state which offers or provides a program of supplementary care to more than 12 related or unrelated children outside of their homes on a regular basis for a part of the 24 hours in one or more days in the week.

B. GROUP DAY-CARE HOME

- A place licensed by the state which offers or provides a program of supplementary care to more than six related or unrelated persons on a regular basis for a part of the 24 hours in one or more days in a week.

C. FAMILY DAY-CARE HOME

- A private family home licensed by the state caring for not more than six children, including the provider's own children not in school full time, where the children are cared for not less than three or not more than 12 hours during a twenty-four-hour period and where care is given on a regularly recurring basis. A "family day-care home" shall be defined as a home occupation.

DRIVE-THRU ESTABLISHMENT

A place of business where food, goods and/or services are delivered through a pickup window, generally to a vehicle, or; a place of business which through design, physical facilities, service or packaging procedures, permits customers to receive services or food, or obtain goods while remaining in their motor vehicles, or; a place of business so developed that its principal retail or service character is dependent on providing a driveway approach of parking spaces for motor vehicles so as to serve patrons while in the motor vehicle.

[Added ASTM 4-3-1995, Art. 12]

DRIVE-THRU WINDOW

A customer service facility located in the principal structure or anywhere on the lot designed to enable the customer to transact business with a person or machine located within a structure without exiting the motor vehicle. This definition shall include without limitation: food take-out windows, kiosks, pneumatic tubes, drop boxes, etc.

[Added ASTM 4-3-1995, Art. 12]

DWELLING

A building or portion thereof used exclusively for residential occupancy including one-family, two-family and multifamily dwellings, but not including commercial accommodations used, or intended for use, by single or multiple families, as the case may be, for living, sleeping, cooking and eating.

[Amended ATM 4-7-1981, Art. 44; STM 11-16-1983, Art. 43]

DWELLING UNIT

A room or enclosed floor space within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating.

[Amended STM 11-16-1983, Art. 43]

FAMILY

- A. An individual residing in one dwelling unit; or
- B. A group of persons related by marriage, blood and/or adoption, including domestic employees, residing in one dwelling unit; or
- C. A group of unrelated individuals, not to exceed five, residing cooperatively in one dwelling unit. In this instance, the taking of boarders is expressly prohibited.
- D. A group of unrelated individuals, determined to be handicapped by the Building Commissioner under the Federal Fair Housing Act, state law or this bylaw, residing cooperatively in one dwelling unit up to five individuals or at a density of no more than two individuals per bedroom, whichever is greater.

[Added AFTM 11-18-2002, Art. 6, approved 3-13-2003]

FLOODPLAIN DISTRICT

Those areas subject to coastal flooding at the base flood elevation levels established in § 240-81 of this chapter. The Floodplain Districts are shown on the Town Zoning Map on file in the Town Hall with the Town Clerk.

FLOODPLAIN PERMITS

[Repealed ASTM 4-3-1995, Art. 10]

FLOODPROOFING

Watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood.

FLOOR AREA RATIO (FAR)

The fixed relationship between the lot area and the floor area of any structure(s) thereon, and expressed as a fraction of gross floor area/lot area.

[Added ATM 4-2-1990, Art. 11]

GROSS (LEASABLE) FLOOR AREA

See "Leasable (gross) floor area."

[Added STM 10-2-1990, Art. 6, approved 1-9-1991]

GROUND-MOUNTED SOLAR PHOTOVOLTAIC ARRAY

A system of solar panels structurally mounted on the ground generating electricity to be used on site or sold to the wholesale electricity market.

[Added AFTM 11-7-2011, Art. 3, approved 1-31-2012]

GUEST UNIT

A room or suite of rooms in commercial accommodations suitable for separate rental.

HALF STORY

That portion of a building under any type of sloping roof, which is potentially habitable as defined under Massachusetts Building Code and within which the number of square feet in area is never more than 1/2 of that of the story below. If the square foot area of the subject portion is greater, that portion shall be deemed a story.

[Amended ATM 4-7-1986, Art. 71; ATM 4-5-1988, Art. 47]

HOME OCCUPATIONS

Use of a dwelling unit, or an accessory building, that is clearly incidental and subordinate to its use for residential purposes, by its family residents for employment involving the manufacture, provision or sale of goods and/or services. For the purposes of this definition, the home occupation must be owned and operated by the resident of the premises.

[Added ATM 4-9-1980, Art. 72; amended STM 4-3-2002, Art. 1, approved 7-25-2002; ATM 4-7-2008, Art. 10, approved 5-20-2008]

HOME-BASED SERVICE BUSINESSES

A home occupation that operates from a single-family residence, or structure on an adjoining lot provided that both lots are in common ownership with the respect to fee and not-fee interests and do not satisfy the definition of a "contractor yard," and meet the following criteria:

[Added STM 4-3-2002, Art. I, approved 7-25-2002]

A. The single-family residence shall be the domicile of the resident owner/operator of the business.

[Amended AFTM 11-10-2008, Art. 4, approved 1-6-2009]

B. The business employs no more than two individuals who are nonfamily members on the premises.

C. The business is one of the following types:

(1) Landscaping.

(2) Electrical wiring.

(3) Plumbing, including gas fitting.

(4) Construction, including but not limited to home building and remodeling, framing, masonry and foundations, siding, carpentry, drywall and plastering, flooring, heating, air conditioning, energy service, roofing, painting, sign making.

(5) Mobile marine services, excluding boat storage.

(6) Other general services not more specifically listed.

- D. The business meets all the criteria contained in § **240-162F(3)(a)** through **(e)**, the special permit criteria for home-based service businesses.

HOUSE TRAILER

A non-motorized vehicle originally designed or permanently altered and equipped for human habitation which is not used to transport property other than property used for human habitation or camping purposes.

[AFTM 11-13-2000, Art. 4, approved 4-11-2001]

ICE HOUSE

A building designed, erected and/or used for the storage and/or manufacture of ice.

KENNEL

A shelter for four or more dogs, six months of age or over.

[Added STM 11-1-1988, Art. 53; amended AFTM 11-30-1993, Art. 9, approved 2-25-1994]

KENNEL, COMMERCIAL

A kennel maintained as a business for the breeding, rearing, training, boarding or grooming of dogs, or which sells dogs born and raised on the premises from more than one litter per year.

[Added AFTM 11-30-1993, Art. 9, approved 2-25-1994]

KENNEL KEEPER

The owner or person hired by the owner to provide for the care of dogs in the licensed kennel.

[Added AFTM 11-30-1993, Art. 9, approved 2-25-1994]

KENNEL OWNER

The person in whose name the kennel license is issued.

[Added AFTM 11-30-1993, Art. 9, approved 2-25-1994]

LEASABLE (GROSS) FLOOR AREA

The sum of the gross horizontal areas of all floors of all buildings on the lot measured from the exterior faces or walls. This shall include the area of basements used for custodial, commercial, industrial or residential purposes but not that area for housing of mechanical or central heating equipment of the building, nor areas of basements not open to the public that are used solely for the owner's and tenant's storage of merchandise or supplies.

[Added ATM 4-5-1988, Art. 48; amended ATM 12-16-1991, Art. 4; STM 10-2-1990, Art. 5, approved 1-9-1991; STM 4-8-2003, Art. 4]

LODGING OR ROOMING HOUSE

A building in which rooms for living purposes are offered for rent, by the day, week or month, for compensation, to five or more persons other than members of the family of the proprietor, and which is, or ought to be, licensed as a "lodging house" under MGL C. 140, § 23.

LOT

A continuous parcel of land under one ownership delineated by a solid closed line and shown on a plan endorsed by the Planning Board and filed at the Land Court or the Registry of Deeds.

LOT AREA

The horizontal area of the lot exclusive of any area in a street or recorded way open to public use. Land under any water body, freshwater or coastal wetland, any beach, dune, flat, marsh or swamp as defined in § **235-9B** of the Town of Falmouth Wetlands Protection Bylaw, shall not be included in the "lot area" required for zoning compliance. This amendment to Lot Area definition shall not apply to a lot shown on a plan or described in a deed duly recorded at the Registry of Deeds as of April 1, 1996, which, at the time of the zoning bylaw change, conformed to the then existing requirements for the zoning district in which it is located.

[Amended ATM 4-5-1983, Art. 47; ASTM 4-1-1996, Art. 10, approved 4-18-1996]

LOT FRONTAGE

That portion of a lot fronting upon and having legal rights of access to a street to be measured continuously along one street line between the side lot lines and their intersection with the street line, or in the case of a corner lot, the combined frontage to the point of intersection with the street lines extended. Frontage requirements for up to three lots on the arc of the curve at the end of culs-de-sac may be reduced to no less than 60% of the required minimum for the district.

[Amended ATM 4-7-1981, Art. 44; AFTM 11-17-1998, Art. 3, approved 2-25-1999]

LOT WIDTH

The diameter of the largest circle that can be inscribed in the lot boundaries. Land under any water body, freshwater or coastal wetland, any beach, dune flat, marsh or swamp, as defined in § **235-9B** of the Town of Falmouth Wetlands Protection Bylaw, shall not be included in the lot width required for zoning compliance. This definition will only apply to a new lot created after April 13, 1998.

[Amended ATM 4-7-1981, Art. 44; ATM 4-2-1984, Art. 53; STM 10-2-1990, Art. 8, approved 1-9-1991; ATM 4-1-1991, Art. 20; ASTM 4-13-1998, Art. 11, approved 6-9-1998]

MARINA

A municipally or commercially operated landing and mooring place for yachts and other noncommercial boats and vessels, consisting of bulkheading and/or finger piers, and including facilities for the retail sale of fuel, lubricants, water and ice, shore telephone and power service and the disposal of refuse in a manner approved by the Board of Health.

MARSH

Any essentially flat, frequently wet and occasionally flooded area adjoining open water along the shores of a pond or its banks, or a stream and lying between such open water and the adjacent natural or artificial upland.

MEAN SEA LEVEL

Whenever "mean sea level" appears in this chapter, it shall be the mean sea level datum of 1929, known as the "National Geodetic Vertical Datum."

MOTOR HOME

An automotive vehicle built on a truck or bus chassis and equipped as a self-contained traveling home.

[Added AFTM 11-13-2000, Art. 4, approved 4-11-2001]

MOTOR VEHICLE SALES

Premises licensed for sale or rental of self-propelled wheeled conveyances including automobiles, motorcycles, mopeds, motorized recreational vehicles, trucks, buses and construction or farm equipment.

MOTOR VEHICLE SERVICE STATION

Premises devoted primarily to retail sale and on-premises dispensing of fuels and lubricants and/or washing of motor vehicles, with any repair services or other sales or services of secondary importance, not to include body work, painting or major repairs.

MULTIFAMILY DWELLING

A building designed and constructed so as to contain three or more suites of one or more rooms, each suite provided with individual cooking and other facilities for independent housekeeping, used or intended to be used for the nontransient housing of three or more family units.

MULTIFAMILY USE

Any combination of dwellings, as defined, on a single lot resulting in three or more dwelling units.

[Added STM 4-3-2012, Art. 4, approved 5-4-2012]

MULTIPLE USE

Any combination of uses allowed as a matter of right or special permit on a single lot which may require separate permits for construction, occupancy, business certification, license to sell food or alcohol or other municipal approval.

[Added AFTM 11-17-1997, Art. 2, approved 2-27-1998]

NONCONFORMING USE, BUILDING OR STRUCTURE

An existing use of land, or a building or structure or use thereof which does not conform to the regulations for the district in which it exists.

NURSERIES

Place where tree, shrubs, and plants are grown, whether from seed or otherwise, including plants maintained for sale on or off the premises and, in conjunction with the sale of such plants, only such quantities of peat moss, humus, mulches, fungicides, insecticides, chemicals and fertilizers as intended to nourish and/or preserve such plants.

[Added AFTM 12-1-1993, Art. 8, approved 2-25-1994]

ONE-FAMILY HOUSE

A detached dwelling designed for and occupied by a single family, but not including a mobile home.

POND

Any body of open water, other than a stream, a bay or the ocean.

PRINCIPAL STRUCTURE

The structure in which the primary use of the lot is conducted, including porches, patios, decks, utility buildings and any other attached projections of the structure. Setback requirements for "principal structures" shall not apply to permissible yard and court encroachments allowed under Section 311.0 of the State Building Code and to uncovered and unenclosed first-floor entry platforms if those platforms extend no more than four feet from the outside wall and are no more than four feet wide.

[Added ATM 4-5-1983, Art. 46; amended ATM 4-9-1987, Art. 37]

RESTAURANT

An establishment in which food is prepared and served and customers' orders are taken and served at dining tables. A single inside takeout station may be considered accessory to a conventional "restaurant."

[Amended STM 10-25-1989, Art. 65]

RESTAURANT CLASS I

Any establishment which has a rating of 199 or less as measured by the Table of Performance Indicators for Restaurant Classifications found in Article **XIII** of the Zoning Bylaw.

[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]

RESTAURANT CLASS II

Any establishment which has a rating of 200 to 265 as measured by the Table of Performance Indicators for Restaurant Classifications found in Article **XXIII** of the Zoning Bylaw.

[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]

RESTAURANT CLASS III

Any establishment which has a rating of 266 to 299 as measured by the Table of Performance Indicators for Restaurant Classifications found in Article **XXIII** of the Zoning Bylaw.

[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]

RESTAURANT IV

Any establishment which has a rating of 300 or more as measured by the Table of Performance Indicators for Restaurant Classifications found in Article **XXIII** of the Zoning Bylaw.

[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]

RESTAURANT, FAST-FOOD

Establishment for the immediate sale of food or drink prepared on or off premises and served in disposable containers or wrappers for consumption on or off premises unless such sales are wholly incidental to a conventional restaurant or other use such as a grocery or convenience store or food market or other use defined in this chapter. Service is usually cafeteria style or from a serving counter. Such establishment may include inside seating, but table service is usually not provided or only incidental. All restaurant establishments providing in-car, drive-through service are included in this definition.

[Added ATM 4-4-1979, Art. 102; amended ASTM 4-6-1992, Art. 9]

SALVAGE YARDS

A place where junk, waste, discarded or salvage materials are bought, sold, exchanged, stored, bailed, packed, disassembled or handled including automobile wrecking yards, house wrecking and structural steel and equipment but not including the purchase or storage of used furniture and household equipment, used cars in operable condition, used or salvaged materials as part of manufacturing operations.

[Added ATM 4-7-1981, Art. 44]

SAND DUNE

A naturally occurring accumulation of sand in ridges or mounds landward of the beach.

SEMIDETACHED HOUSE

Two one-family houses built together at the same time and separated by a fireproof division with no openings.

SETBACK

The distance between a lot line and the line beyond which a structure may be built or an allowed use may occur.

[Added ATM 4-7-1981, Art. 44; amended STM 10-2-1990, Art. 14, approved 1-9-1991]

SIGN

Any device, surface or framework on which words, symbols or other designs are inscribed or displayed and designed to call attention thereto, including flags, banners and the like.^[2]

SIGN, REAL ESTATE

A sign advertising the sale or rental of only the premises on which it is located, and bearing the name, address and/or telephone number of the agent through which such sale or rental may be accomplished. Such "sign" shall include no other advertising material, and shall not be illuminated.^[3]

STACKING AREA

A queuing area made up of individual stacking spaces for motorists who remain in their vehicles awaiting service at a drive-thru window.

[Added ASTM 4-3-1995, Art. 12]

STORY

A partially or wholly enclosed floor of a building. A story, the ceiling of which is four feet or more above the average natural grade level across the building wall fronting all streets, shall be considered a "story."

[Amended ATM 4-7-1986, Art. 71]

STREAM

Any natural watercourse, generally containing water, through and along which water may flow from a pond, swamp or similar body of water to another, to another "stream" or to the ocean.

STREET

An accepted Town way, or a way established by or maintained under County, state or federal authority, or a way established by a subdivision plan approved in accordance with the Subdivision Control Law,^[4] or a way in existence when the Subdivision Control Law became effective in the Town of Falmouth determined by the Planning Board to have sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

[Amended ATM 11-17-2003, Art. 6]

STRUCTURE

Anything constructed or erected, the use of which requires fixed location on the ground or attachment to something located on the ground, including but not limited to tennis or similar sports courts and swimming pools if more than 24 inches deep or 250 square feet in area or gas or liquid storage tanks if principally aboveground, but not including retaining walls or fences. Stonewalls, retaining walls, fences, gates, memorials, and paved driveways or other paved areas located in an Historic District created pursuant to c. 654 of the Acts of 1975 as amended and visible in the opinion of the Building Commissioner from a public way shall be considered structures.

[Amended ATM 4-7-1986, Art. 71; AFTM 11-15-1999, Art. 4, approved 3-22-2000; ATM 4-7-2008, Art. 14, approved 5-20-2008]

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred, regardless of the value of or actual cost of repair work performed.

[Added ATM 4-7-1992, Art. 11]

SUBSTANTIAL IMPROVEMENT

Any combination of repair, reconstruction, rehabilitation, addition or other improvement of a structure, performed within any twelve-month period, the cumulative cost of which equals or exceeds 50% of the market value of the structure before the initial improvement or repair is started. For the purposes of this definition, "substantial improvement" commences when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. For the purposes of this definition, in Velocity V Zones "substantial improvement" also includes any addition(s), improvement(s), alteration(s) or combinations thereof to a structure that would add more than 200 square feet of gross floor area. The term does not, however, include either any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the Building Commissioner and which are the minimum necessary to assure safe living conditions or any alteration of a historic structure, provided that the alteration will not preclude the structure's continued federal or state designation as a historic structure.

[Amended ASTM 4-6-1992, Art. 12; AFTM 11-13-2001, Art. 6, approved 3-15-2002]

SWAMP

Any depressed area of poor drainage, subject to flooding by freshwater, in which the water table is generally at or above the ground level, not caused or affected by saltwater or action of the oceanic tide.

TIDAL MARSH

Any marsh area in which action of the oceanic tide causes the surface to be flooded regularly

by the spring tides in the course of the annual tidal cycle, but exclusive of storm tides, hurricane tides or tidal waves and any marsh area developed and maintained by incursion of the oceanic saltwater or by action of the oceanic tide, as indicated by the presence of the salt marsh grasses, *Spartina alterniflora*, *Spartina patens* or *Distichlis spicata*, commonly known respectively as "thatch" or "saltwater cord grass," "salt meadow" or "high water cord grass" or "spike grass." Such area shall include all of the original contiguous area of "tidal marsh" from which saltwater is excluded at present by artificial dikes, causeways or the like.

TIDAL POND

Any pond in which action of the oceanic tide causes the water to ebb and flow or the water level therein to rise and fall with some regularity, exclusive of storm tides, hurricane tides or tidal waves, irrespective of any actual incursion or admixing of oceanic saltwater.

[Added ATM 4-5-1983, Art. 45]

TIDAL RIVER

Any stream in which action of the oceanic tide causes the water to ebb and flow or the water level therein to rise and fall with some regularity, exclusive of storm tides, hurricane tides or tidal waves, irrespective of any actual incursion or admixing of oceanic saltwater.

TIME-SHARING OR TIME-INTERVAL-OWNERSHIP DWELLING UNIT

A dwelling unit in which the exclusive right of use, possession or ownership circulates among various owners or lessees thereof in accordance with a fixed or floating time schedule on a periodically recurring basis, whether such use, possession or occupancy is subject to either: a time-share estate, in which ownership or leasehold estate in property is devoted to a time-share fee (tenants-in-common, time-span ownership, interval ownership) and a time-share lease; or time-share use, including any contractual right of exclusive occupancy which does not fall within the definition of time-share estate including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond.

[Added STM 11-15-1983, Art. 45]

TRAVEL TRAILER AND FIFTH-WHEEL TRAILER

A non-motorized vehicle designed to be towed by a car or truck generally having cooking, sleeping, living and bathroom facilities within.

[Added AFTM 11-13-2000, Art. 4, approved 4-11-2001]

TWO-FAMILY HOUSE

A detached dwelling designed for two families.

USE

A purpose for which land or a building is arranged, designed or intended or for which land or a building is or may be occupied.

[Added AFTM 11-17-1997, Art. 2, approved 2-27-1998]

VELOCITY ZONES (V-ZONES)

Those direct coastal areas within a Floodplain District which may be subject to extreme damage from the velocity of wave action or storm surge. The V-Zones are shown on the Town Zoning Map on file in Town Hall with the Town Clerk.^[5]

WOODWORK MILL, PORTABLE

Equipment for producing lumber from logs, without permanent installation.

YARD

An area open to the sky, located between a street or other property line and any structure or element thereof other than a fence, wall, other customary yard accessory or projection allowed to encroach on building lines by the Commonwealth of Massachusetts State Building Code. Depth is to be measured perpendicularly to the street or property line.

YARD, FRONT

[Amended ATM 4-4-1988, Art. 50; ATM 4-2-1990, Art. 10; ATM 4-7-2008, Art. 20, approved 5-20-2008; AFTM 11-7-2011, Art. 4, approved 1-31-2012]

- A. That area of a lot between the front walls (including offsets) of the principal building and the lot frontage adjacent to the street the lot adjoins,
- B. Plus the areas between the lot frontage adjacent to the street and lines drawn from the two front corners of the building parallel to the lot frontage until they intersect a side lot line.

Note: A lot may have more than one front yard. Therefore, primary front yards may be designated by the Building Commissioner for the purpose of maintaining a front yard setback. A front yard not designated as a primary front yard may maintain a side or rear yard setback.

YARD, REAR

That portion of a lot extending across the full width of the lot between the rear wall(s) of the principal structure and the rear lot line. The depth of the required "rear yard" shall be measured horizontally from the nearest part of the rear lot line toward the nearest part of the principal structure.

[Amended ATM 4-5-1988, Art. 47]

YARD, SIDE

That portion of a lot between the principal structure and the side lot line extending from the front yard or front lot line where no front yard is required, to the rear yard. The width of the required "yard" shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the main building.

[Amended ATM 4-5-1988, Art. 47]

- [1] *Editor's Note: The former definition of "accessory apartment," added ASTM 4-2-2001, Art. 12, approved 10-31-2001, which immediately preceded this definition, was repealed ATM 4-3-2017, Art. 7, approved 6-14-2017.*
- [2] *Editor's Note: The former definitions of "sign, accessory," "sign, area," "sign, off-premises," and "sign, overhanging," which immediately followed this definition, were repealed ATM 4-4-2016, Art. 6, approved 5-3-2016.*
- [3] *Editor's Note: The former definitions of "sign, standing," "sign, wall," and "sign, window," which immediately followed this definition, were repealed ATM 4-4-2016, Art. 6, approved 5-3-2016.*
- [4] *Editor's Note: See MGL C. 41, §§ 81K through 81GG.*
- [5] *Editor's Note: The definition of "windmill," which immediately followed this definition, added STM 9-10-1981, Art. 50, was repealed ATM 4-8-2013, Art. 7, approved 7-9-2013.*

Article IV. General District Use Regulations

§ 240-14. Types of districts.

- A. For the purpose of this chapter, the Town of Falmouth is divided into types of basic districts designated:

Single Residence District AA

Single Residence District A

Single Residence District B

Single Residence District C

General Residence District

Public Use District

Agricultural District AA
[Added STM 4-9-1980, Art. 24]

Agricultural District A

Agricultural District B

Marine District

Business District 1 (Central)
[Added ATM 4-4-1979, Art. 102]

Business District 2 (Outlying)
[Added ATM 4-4-1979, Art. 102]

Business District 3 (Limited)
[Added ATM 4-4-1979, Art. 102]

Light Industrial District A

Light Industrial District B
[Amended ATM 4-4-1979, Art. 102]

Light Industrial C District
[Added AFTM 11-7-2011, Art. 3, approved 1-31-2012]

Senior Care Retirement District
[Added AFTM 11-18-2002, Art. 4, approved 3-13-2003]

Business Redevelopment District
[Added AFTM 11-9-2009, Art. 7, approved 2-5-2010]

- B. Certain overlay districts are also established and defined in Articles **XV** through **XXI**, overlay regulations. In addition to these districts, there is an Historic District established by Chapter 654 of the Acts of 1975, separately regulated.

§ 240-15. Zoning Map.

[Amended ATM 4-7-1980, Art. 73; AFTM 11-13-2006, Art. 2, approved 3-6-2007]

Said districts are shown, defined and bounded on the maps accompanying this chapter entitled, "Town of Falmouth - Zoning Map," dated 1 March 1980, filed with the Town Clerk. Said Zoning Map shall use the 1 January 2006 Town of Falmouth Assessors Sheets as a base map. Said maps and all explanatory matter therein are hereby made part of this chapter.

§ 240-16. District boundaries.

[Amended ATM 4-4-1985, Art. 63]

Whenever a road, way, right-of-way, railroad or comparable man-made or man-designed area or feature, or any pond, stream, river, swamp, bog, marsh or other body of water or comparable natural or quasi-natural geographic features are shown on the Zoning Map as a boundary between districts of different zoning, the geographic district boundary shall be on the center line of such feature. Any such feature lying totally within a designated zone shall be zoned as the other land around it. No part of the land or water area within the Town shall be unzoned.

§ 240-17. Compliance required.

No building or structure shall be erected, altered or extended and no premises shall be used, except as provided in Articles **V** through **XIII**, district use regulations.

§ 240-18. Classification of uses.

Where an activity might be classified under more than one of the following uses, the more specific classification shall govern; if equally specific, the more restrictive shall govern. Uses not classifiable under any category listed for the applicable district are prohibited, except that a use listed nowhere in Articles **V** through **XIII** may be allowed on special permit if the Board of Appeals determines that it closely resembles in its neighborhood impacts a use allowed or allowed on special permit in that district.

§ 240-18.1. Multiple uses.

[Added ASTM 4-3-1995, Art. 11]

For property in any Business 1, 2, 3 or Industrial A District, on which exists a specially permitted use, any additional use proposed for that property, including a use allowed in the zoning district as a matter of right, will require the issuance of a special permit by the Board of Appeals. The Board of Appeals shall take into consideration the combined effects of each use on the property and determine whether such combination is in harmony with the general intent of this bylaw utilizing the criteria of Articles **XXII**, **XXIII**, **XXIV** and **XLII**. This section shall not be construed to prohibit any property owner from conducting a use allowed by right in the zoning district provided that any existing use approved by special permit on the same lot is abandoned. Any additional use for which a special permit is required shall be subject to the standards in this section with respect to review of the combined effects of each use on the property.

§ 240-18.2. Uses prohibited.

[Added AFTM 11-6-2017, Art. 16, approved 2-12-2018]

Except as provided by Chapter **240**, Article **XLVII**, Marijuana Treatment Centers, § **240-250**, of this zoning bylaw, all types of marijuana establishments as defined in MGL c. 94G, § 1, to include all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana-related business, shall be prohibited within all zoning districts in the Town of Falmouth.

Article V. Single Residence Districts

§ 240-19. Permitted residential uses.

Permitted residential uses:

- A. One-family detached houses.

§ 240-20. Permitted community service uses.

Permitted community services uses:

- A. Churches, schools, public libraries, public museums, parish houses, group day-care homes and child day-care centers.

[Amended ATM 4-6-1992, Art. 13]

- B. Parks, playgrounds, water towers, reservoirs, fire stations, beaches, watershed, Town forests and municipal recreation buildings.

[Amended ATM 4-8-1981, Art. 51]

- C. Passenger stations, Town wharves and landings.

§ 240-21. Other permitted principal uses.

Other permitted principal uses:

- A. Agriculture, horticulture and floriculture. If involving the raising and keeping of livestock other than for the private use of the residents of the premises, only on parcels of five acres or larger.
- B. Piers, floats and docks when approved by the Conservation Commission and the Board of Selectmen as a common pier, float or dock.
[Added STM 11-1-1988, Art. 56]

§ 240-22. Permitted accessory uses.

Permitted accessory uses:

- A. Such accessory uses as are customarily incidental to any of the above uses.
- B. The taking of four or fewer boarders within a single-family dwelling by a family resident on the premises.
[Amended AFTM 11-18-2002, Art. 3, approved 3-13-2003]
- C. A home occupation. (See §§ 240-162.F(1), 162.F(2) and 162.F(3) for special permit requirements for some home occupations)
[Amended ATM 4-9-1980, Art. 72; AFTM 11-14-2005, Art. 3, approved 12-8-2005]
- D. Television or radio antennas not exceeding 50 feet above ground level.

§ 240-23. Special permit uses.

[Amended STM 12-13-1979, Art. 51; ATM 4-9-1980, Art. 72; ATM 4-8-1981, Art. 48; STM 9-10-1981, Art. 50; ATM 4-5-1984, Art. 58]

The special permit granting authority for the following uses shall be the Board of Appeals except where noted otherwise in this chapter:

- A. Commercial accommodations. (See Article **XXVII**.)
- B. Conversion of a dwelling in existence on the lot as of 1 January 1980 into up to four dwelling units under the following criteria.
[Amended ATM 4-1-1985, Art. 62; AFTM 11-14-1994, Art. 3; STM 4-13-2004, Art. 1]
- (1) If said conversion is within a Water Resource Protection District or within a Coastal Pond Overlay District, the minimum lot size shall be 15,000 square feet for one additional dwelling unit, 20,000 square feet for two additional dwelling units and 25,000 square feet for three additional dwelling units.
 - (2) There shall be no home occupations or taking of boarders.
 - (3) No additional bedrooms shall be allowed above the number in existence in the dwelling as of January 1, 1980.

- (4) Said conversion shall not involve any material change in the exterior of the existing dwelling, including architectural features. Said conversion may not increase the gross floor area of the dwelling, as it existed on January 1, 1980.
- (5) The following exceptions may be allowed by the Board of Appeals in the issuance of this special permit:
 - (a) Affordable units, as this term is defined in the zoning bylaw, need not comply with the additional square footage requirements in Subsection **B(1)** above so long as the minimum lot size is 15,000 square feet.
 - (b) Preexisting conversions performed without the benefit of a special permit under this section shall be exempt from the requirements of Subsection **B(1)** above if an application to obtain a special permit under this section is received by the Board of Appeals within one year of the effective date of this bylaw and subsequently approved.
- C. Hospitals, sanatoria and philanthropic institutions.
[Amended ATM 4-6-1988, Art. 53; ATM 4-6-1992, Art. 13]
- D. Private clubs not conducted for profit.
- E. Television or radio antennas exceeding 50 feet above ground level.
- F. Roadside stand for the sale of only the products of the land of the owner of the premises.
- G. The following accessory uses:
 - (1) Garage space for more than two cars if:
[Amended AFTM 11-13-2001, Art. 2, approved 3-15-2002]
 - (a) The lot is 30,000 square feet or less or;
 - (b) The footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure whichever is less.
[Amended AFTM 11-14-2005, Art. 5, approved 12-8-2005]
 - (2) A home occupation. (See §§ 240-162.F(1), 162.F(2) and 162.F(3) for special permit requirements for some home occupations).
[Amended AFTM 11-14-2005, Art. 3, approved 12-8-2005]
 - (3) Scientific research. (See § **240-158.**)
 - (4) The outside parking of more than one commercial light panel, delivery or pickup truck; or any school bus; or any tow truck. For the purposes of this section, temporary parking of school buses for two hours or less per day shall not require the issuance of a special permit, provided no school buses shall be parked on a public way.
[Amended AFTM 11-13-2000; Art. 4, approved 4-11-2001; ATM 4-7-2008, Art. 9, approved 5-20-2008]
 - (a) Any motor home, travel trailer or fifth-wheel trailer not located within the minimum front, side (parking) or rear yard setback requirements;
 - (b) Any commercially registered vehicle with a gross vehicle weight of more than 13,000 pounds.^[1]
[1] Editor's Note: Former Subsection G(5), Windmills, which immediately followed this subsection, was repealed ATM 4-8-2013, Art. 7, approved 7-9-2013.

- H. Boat storage as a commercial operation under the following standards in addition to the requirements of Article **XLII**:
[Added ATM 4-7-1986, Art. 89]
- (1) The lot shall be a minimum of two acres.
[Amended STM 10-25-1989, Art. 69]
 - (2) The side and rear yard setbacks shall be a minimum of 50 feet. Lesser setbacks to a minimum of 30 feet may be allowed when a combination of landscaping and natural features provide visual screening as necessary and in proportion to the need to buffer from adjacent land uses. All allowed structures, fencing and walls must meet these setback requirements. The dimensional requirements of Article **XIV** shall otherwise apply.
[Amended STM 10-25-1989, Art. 69]
 - (3) Sailboats shall be demasted and no boat on its cradle or other support system shall be higher than 18 feet at any point.
[Amended STM 10-25-1989, Art. 69]
 - (4) No structure or signs other than security fencing, one security dwelling which meets all other requirements of this district and boat supports shall be allowed. Stacking of boats higher than 18 feet shall be prohibited.
 - (5) No activity such as cleaning, waxing, repairs or painting shall be allowed. All activities must be specifically approved by the Board of Appeals.
 - (6) To assure the proposed site shall not be located within developed or established residential neighborhoods, the proposed site shall have a common boundary of not less than 20 feet with an industrial or commercial use (a home occupation does not apply), or be located directly across the street from the same so that if property lines were extended across the street, at least 20 feet of street center line would be common boundary.
[Amended STM 10-25-1989, Art. 69]
 - (7) This special permit is only for marinas and boatyards within Falmouth's Marine Zoning District.
[Amended STM 10-25-1989, Art. 69]
 - (8) This special permit shall not apply to any Watershed Protection Overlay District.
[Added STM 10-25-1989, Art. 69]
- I. Accessory apartments.
[Added ATM 4-9-1987, Art. 71; amended ASTM 4-2-2001, Art. 12, approved 10-31-2001; ATM 3-7-2003, Art. 17; ATM 4-6-2009, Art. 13, approved 5-5-2009; AFTM 11-9-2009, Art. 11, approved 2-5-2010; ATM 4-3-2017, Art. 7, approved 6-14-2017; 11-14-2018 FATM, Art. 14, approved 2-21-2019]
- (1) Purpose. The intent of the Accessory Apartment bylaw is to: broaden the range of housing choice in Falmouth by increasing the number of small dwelling units available for rent; encourage greater diversity of population with particular attention to young adult citizens and to allow for "aging in place" for our senior citizens; promote more economic and energy efficient use of the Town's housing supply. All this while maintaining the appearance and character of the Town's single-family neighborhoods.
 - (2) Definitions.

ACCESSORY APARTMENT

Sections **240-3A**, **240-66D** and **240-70D** notwithstanding, an additional dwelling unit, subordinate in size and accessory to the principal dwelling unit on the lot, located in

either the principal dwelling or an accessory structure on the lot. An accessory apartment is constructed so as to maintain the appearance and essential character of a single-family dwelling or accessory structure thereto located on the lot.

(3) Requirements.

- (a) Only one accessory apartment shall be allowed per lot.
- (b) The lot size shall be no less than 7,500 square feet (7,000 square feet minimum in sewer service areas).
[Amended ATM 4-8-2019, Art. 23, approved 7-11-2019]
- (c) Either the principal dwelling or accessory apartment must be owner-occupied for a period of seven months in every calendar year, or owned by a nonprofit organization or government authority whose purpose is to provide affordable housing.
- (d) Either the principal dwelling or accessory apartment may be rented, but not both. The owner occupied dwelling cannot be rented while owner is absent. Rental periods shall be no less than six months and weekly/monthly rentals (so-called summer rentals) are expressly prohibited. Neither the principal dwelling nor accessory apartment shall be used as commercial accommodations at any time.
- (e) The accessory apartment shall have no more than two bedrooms and a maximum of 800 square feet, or 40% of the principal dwelling, whichever is less, as measured using the exterior side of the first floor outside wall. Plus as follows: finished attic space, 50% of first floor; finished half story, 75% of first floor; three-quarter story (gambrel), 90% of first floor; second floor colonial, 100% of first floor; and third floor colonial, 100% of first floor.
- (f) The footprint of a new detached accessory dwelling unit cannot exceed that of the principal dwelling.
- (g) An existing dwelling in excess of four bedrooms may convert two of the existing bedrooms into one accessory unit.
- (h) The total number of bedrooms on the lot shall not exceed four when the lot contains less than 20,000 square feet. A property that has a preexisting bedroom count that exceeds four bedrooms per 20,000 square feet of lot area can maintain that number of current bedrooms but cannot increase.
- (i) Whether allowed as a matter of right or by special permit, accessory apartments located on lots subject to the provisions of the Water Resource Protection or Coastal Pond Overlay Districts, the total number of bedrooms shall not exceed one per 10,000 square feet of lot area. Properties that preexist with a density greater than one bedroom per 10,000 square feet in a Coastal Pond Overlay District can maintain their existing bedroom count but cannot increase.
- (j) Owners of properties in a Coastal Pond Overlay District that want to increase the number of bedrooms beyond the density outlined in Subsection **1(3)(i)** can only do so provided that:
 - [1] Both the principal dwelling and accessory apartment are connected to the municipal sewer system and only to the extent allowed within the applicable sewer district bylaw or regulation; or
 - [2] An on-site septic system with enhanced nitrogen removal approved by the Board of Health is installed on the property.

- (4) Design standards. Accessory apartments, whether a part of new construction, reconstruction, alteration or change to a single-family residence or an attached or detached accessory structure, shall maintain the following standards:
 - (a) The architectural effect, as the result of the accessory apartment being constructed within the principal dwelling or attached thereto, shall be that of a single-family residence consistent in its exterior character.
 - (b) The architectural effect, as the result of the accessory apartment being constructed as a detached accessory structure, shall be that of a structure incidental to a single-family residence and in the same character and period of architecture as the primary residence.
 - (c) Parking for the accessory apartment shall be provided on site.
- (5) Procedures.
 - (a) An accessory apartment constructed within an existing single-family dwelling or an existing accessory structure attached thereto: Prior to the issuance of a building permit for an accessory apartment constructed within a single-family dwelling or accessory structure attached thereto, a Site Plan Review (Design Review), pursuant to Article **XXXIX** of the Zoning Bylaw, shall be conducted by the Planning Board, taking into account the design standards, requirements and purposes of this accessory apartment bylaw. The application for site plan review shall include the information contained in § **240-195C**, unless waived by the Planning Board.
 - (b) Accessory apartment constructed within an existing detached accessory structure or within a new detached accessory structure (not attached to a single-family dwelling): In addition to the site plan review requirements above, an accessory apartment built within or as an accessory structure, not attached to a single-family dwelling, shall require a special permit from the Zoning Board of Appeals. In addition to the design standards, requirements and purposes of this accessory apartment bylaw, the Zoning Board of Appeals shall take into account the standards found in § **240-216A** through **I** of this bylaw.
- (6) Monitoring.
 - (a) An affidavit shall be submitted annually to the Building Commissioner, signed by the property owner, attesting that the principal dwelling or accessory apartment has been owner-occupied for a period of seven months and not otherwise rented as set forth in Subsection **I(3)(c)** above. The Building Commissioner may allow a property owner to be absent during this seven-month period for cause, such as military assignment, work- or health-related issues, academic sabbatical or similar circumstance.
- (7) Enforcement.
 - (a) Upon a written determination by the Building Commissioner that the property owner has failed to comply with these provisions the property owner shall bring the accessory apartment into compliance within 90 days of such notice. Failing compliance, the property shall be restored to single-family dwelling status within 90 days of said failure determination, in a manner that complies with all requirements of the State Building Code and any other local regulations or bylaws.
- J. Common driveway, by special permit from the Planning Board.
[Added AFTM 11-17-1997, Art. 6, approved 2-27-1998]
- K. (Reserved)

- L. In Single Residence A and AA Districts only, wind energy systems, subject to the requirements of Article **XXXIV** (34).
[Added ATM 4-8-2013, Art. 7, approved 7-9-2013]

Article VI. General Residence Districts

§ 240-24. Permitted residential uses.

Permitted residential uses:

- A. One-family detached houses.
- B. Semidetached and two-family dwellings.

§ 240-25. Permitted community service uses.

Permitted community service uses:

- A. Churches, schools, public libraries, public museums, parish houses, group day-care homes and child day-care centers.
[Amended ATM 4-9-1992, Art. 13]
- B. Parks, playgrounds, water towers, reservoirs, fire stations, beaches, watershed, Town forests and municipal recreation buildings.
[Amended ATM 4-8-1981, Art. 51]
- C. Passenger stations, Town wharves and landings.

§ 240-26. Other permitted principal uses.

Other permitted principal uses:

- A. Agriculture, horticulture and floriculture. If involving the raising and keeping of livestock other than for the private use of the residents of the premises, only on parcels of five acres or larger.
- B. Piers, floats and docks when approved by the Conservation Commission and Board of Selectmen as a common pier, float or dock.
[Added AFTM 11-13-2001, Art. 4, approved 3-15-2002; amended 11-9-2009, Art. 11, approved 2-5-2010; STM 11-1-1988, Art. 56]
- C. Multifamily use of no more than three units if at least one unit is affordable as defined.
[Added STM 4-3-2012, Art. 4, approved 5-4-2012]

§ 240-27. Permitted accessory uses.

Permitted accessory uses:

- A. Such accessory uses as are customarily incidental to any of the above uses.
- B. The taking of four or fewer boarders within a single-family dwelling by a family resident on the premises.
[Amended AFTM 11-18-2002, Art. 3, approved 3-13-2003]

- C. A home occupation (See § **240-162.**).
[Amended ATM 4-9-1980, Art. 72]
- D. Television or radio antennas not exceeding 50 feet above ground level.

§ 240-28. Special permit uses.

[Amended STM 12-13-1979, Art. 51; ATM 4-9-1980, Art. 72; STM 9-10-1981, Art. 50; ATM 4-8-1981, Art. 48; ATM 4-2-1984, Art. 47; ATM 4-5-1984, Art. 58]

The special permit granting authority for the following uses shall be the Board of Appeals except where noted otherwise within this chapter:

- A. Commercial accommodations. (See Article **XXVII.**)
- B. Conversion of a dwelling in existence on the lot as of 1 January 1980 into up to four dwelling units if the conversion involves no material change to the exterior of the existing dwelling, and if the Board of Appeals determines that the size of the dwelling and the lot are suitable for the remodeling.
[Amended ATM 4-1-1985, Art. 62; AFTM 11-14-1994, Art. 3]
- C. Hospitals, sanatoria, research and philanthropic institutions.
[Amended ATM 4-6-1988, Art. 53; ATM 4-6-1992, Art. 13]
- D. Private clubs not conducted for profit.
- E. Offices, but not to include medical clinics or retail sales where such use, including any required parking under § **240-108**, is located within 500 feet of a Business or Light Industrial District, and where said lot has frontage on Palmer Avenue except that portion between North Main Street and Main Street and that portion north of Jones Road along the westerly sideline or Locust Street or on the southerly side line of Jones Road, bounded by the easterly side line of Nursery Road and westerly side line of Gifford Street or Water Street from Woods Hole Road to School Street and the Board of Appeals determines that the proposed use and exterior appearance of the proposed structure with proposed landscaping shall be a suitable transition and/or buffer between the Business or Light Industrial District and the abutting Residential or Agriculture District. No special permit shall be granted for the above-noted uses which would in the opinion of the Board of Appeals:
[Amended ATM 4-10-1986, Art. 87; STM 11-1-1988, Art. 58; ASTM 4-6-1993, Art. 16, approved 7-16-1993; ASTM 4-3-2000, Art. 17, approved 9-8-2000; ATM 4-13-2015, Art. II, approved 4-30-2015]
 - (1) Have a negative impact on traffic flow or safety as a result of the proposed use.
 - (2) Have a negative impact on the visual character of the neighborhood or surrounding areas as a result of the proposed use.
 - (3) Result in the construction of a new building, or modification of an existing building that, under the requirements of § **240-108**, requires more than 13 parking spaces.

In granting a special permit, the Board of Appeals shall consider the impact upon traffic flow of any proposed or existing curb cut, and shall encourage the joint use of access points, and shall attempt to minimize curb cuts onto Palmer Avenue and Locust Street and Jones Road.

- F. Television or radio antennas exceeding 50 feet above ground level.
- G. Roadside stand for the sale of only the products of the land of the owner of the premises.

H. The following accessory uses:

- (1) Garage space for more than two cars.
- (2) A home occupation. (See § **240-162F**.)
- (3) Scientific research. (See § **240-158**.)
- (4) The outside parking of more than one commercial light panel, delivery or pickup truck; or any school bus; or any tow truck. For the purposes of this section, temporary parking of school buses for two hours or less per day shall not require the issuance of a special permit, provided no school buses shall be parked on a public way.
[Amended AFTM 11-13-2000, Art. 4, approved 4-11-2001; ATM 4-7-2008, Art. 9, approved 5-20-2008]
 - (a) Any motor home, travel trailer or fifth-wheel trailer not located within the minimum front, side (parking) or rear yard setback requirements;
 - (b) Any commercially registered vehicle with a gross vehicle weight of more than 13,000 pounds.^[1]

[1] *Editor's Note: Former Subsection H(5), Windmills, which immediately followed this subsection, was repealed ATM 4-8-2013, Art. 7, approved 7-9-2013.*

I. Boat storage as a commercial operation under the following standards in addition to the requirements of Article **XLII**:
[Added ATM 4-7-1986, Art. 89]

- (1) The lot shall be a minimum of two acres.
- (2) The side and rear yard setbacks shall be a minimum of 50 feet. Lesser setbacks to a minimum of 30 feet may be allowed when a combination of landscaping and natural features provide visual screening as necessary and in proportion to the need to buffer from adjacent land uses. All allowed structures, fencing and walls must meet these setback requirements. The dimensional requirements of Article **XIV** shall otherwise apply.
[Amended STM 10-25-1989, Art. 69]
- (3) Sailboats shall be demasted and no boat on its cradle or other support system shall be higher than 18 feet at any point.
[Amended STM 10-25-1989, Art. 69]
- (4) No structure or signs other than security fencing, one security dwelling which meets all other requirements of this district and boat supports shall be allowed. Stacking of boats higher than 18 feet shall be prohibited.
- (5) No activity such as cleaning, waxing, repairs or painting shall be allowed. All activities must be specifically approved by the Board of Appeals.
- (6) To assure the proposed site shall not be located within developed or established residential neighborhoods, the proposed site shall have a common boundary of not less than 20 feet with an industrial or commercial use (a home occupation does not apply), or be located directly across the street from the same so that if property lines were extended across the street, at least 20 feet of street center line would be common boundary.
[Amended STM 10-25-1989, Art. 69]
- (7) This special permit is only for marinas and boatyards within Falmouth's Marine Zoning District.
[Amended STM 10-25-1989, Art. 69]

- (8) This special permit shall not apply to any Watershed Protection Overlay District.
[Added STM 10-25-1989, Art. 69]
- J. Common driveway, by special permit from the Planning Board.
[Added AFTM 11-17-1997, Art. 6, approved 2-27-1998]
- K. K. Conversion of a single-family dwelling, or portion thereof, in existence on the lot as of January 1, 1980, into professional office space or business office space associated with the uses specified in Section (4)(a) through (f) below, but not to include medical clinics or retail sales under the following criteria:
[Added ATM 11-17-2003, Art. 4]
- (1) The dwelling must be located within 500 feet of a business or industrial district.
 - (2) Said lot must have frontage on the westerly sideline of Palmer Avenue south of Ter Heun Drive but north of the intersection of Palmer Avenue and North Main Street and have a minimum of 10,000 square feet of area.
 - (3) Except as may be allowed by the Historic District Commission or required by the State Building Code, said conversion shall not involve material change to the exterior of the existing dwelling including architectural features. Said conversion may not increase the gross floor area of the dwelling, as it existed on January 1, 1980.
 - (4) The business office space shall only be associated with the following types of businesses:
 - (a) Landscaping or landscape design.
 - (b) Construction and construction-related trades.
 - (c) Educational.
 - (d) Research.
 - (e) Philanthropic institutions.
 - (f) Other general services not more specifically listed.
 - (5) Vehicles parked on the premises shall not exceed 13,000 pounds GVW, and shall be restricted to side and rear yards.
 - (6) No special permit shall be granted for the above-noted uses which would, in the opinion of the Board of Appeals:
 - (a) Negatively impact traffic flow or safety; or
 - (b) Negatively impact the visual character of the neighborhood or surrounding areas; or
 - (c) Result in the modification of the existing dwelling that, under the requirements of § **240-108**, requires more than 13 parking spaces.

Article VII. Public Use Districts

§ 240-29. Permitted residential uses.

Permitted residential uses:

- A. One-family detached houses.
- B. Semidetached and two-family dwellings.
- C. Public or nonprofit housing for the elderly. (See § **240-164.**)
[Amended ATM 4-8-1981, Art. 54; ATM 4-6-1992, Art. 23]

§ 240-30. Permitted community service uses.

Permitted community service uses:

- A. Churches, schools, libraries, museums, parish houses, hospitals, sanatoria, educational, research and philanthropic institutions, cemeteries, group day-care homes and child day-care centers.
[Amended ATM 4-6-1988, Art. 53]
- B. All municipal purposes, including the administration of government, parks, playgrounds, recreation buildings, Town forests, watershed, water towers and reservoirs, beaches, fire and police stations and armories.
- C. Passenger stations, Town wharves and landings.

§ 240-31. Other permitted principal uses.

Other permitted principal uses:

- A. Agriculture, horticulture and floriculture. If involving the raising and keeping of livestock other than for the private use of the residents of the premises, only on parcels of five acres or larger.
- B. Piers, floats and docks, when approved by the Conservation Commission and Board of Selectmen as a common pier, float or dock.
[Added STM 11-1-1988, Art. 56]

§ 240-32. Permitted accessory uses.

Permitted accessory uses:

- A. Such accessory uses as are customarily incidental to any of the above uses.
- B. The taking of four or fewer boarders within a single-family dwelling by a family resident on the premises.
[Amended AFTM 11-18-2002, Art. 3, approved 3-13-2003]
- C. A home occupation. (See § **240-162.**)
[Amended ATM 4-9-1980, Art. 72]
- D. Television or radio antennas not exceeding 50 feet above ground level.
- E. Access drives to Business and Industrial Districts.
[Added ATM 4-5-1988, Art. 49]
- F. Accessory science and technology research and development, including production as limited herein, by public or private institutions or firms, whether for profit or otherwise, but only if accessory to operations of a nonprofit educational institution or government agency, provided

that such use is on a lot or contiguous lots in common ownership containing a total of not less than 40 acres in the Public Use District, that such production shall not be located within 100 feet of any other zoning district where residential uses are permitted and that the total floor area used for such production shall not exceed one-half percent (.50%) of such total lot area. Any such production shall be in compliance with § **240-110** and shall involve or be derived from research and development activities of such nonprofit educational institution or government agency. Prior to commencement of each new production activity, written notice describing such production shall be filed with the Falmouth Hazardous Waste Coordinator, the Falmouth Fire Chief and the Falmouth Board of Health.

[Added ATM 4-6-1992, Art. 14]

§ 240-33. Special permit uses.

[Amended STM 12-13-1979, Art. 51; ATM 4-9-1980, Art. 72; ATM 4-8-1981, Arts. 48 and 57; STM 9-10-1981, Art. 50; ATM 4-5-1984, Art. 58]

The special permit granting authority for the following uses shall be the Board of Appeals except where noted otherwise within this chapter:

- A. Commercial accommodations. (See Article **XXVII**.)
- B. Conversion of a dwelling in existence on the lot as of 1 January 1980 into up to four dwelling units if the conversion involves no material change to the exterior of the existing dwelling, and if the Board of Appeals determines that the size of the dwelling and the lot are suitable for the remodeling.
[Amended ATM 4-1-1985, Art. 62; AFTM 11-14-1994, Art. 3]
- C. Private clubs not conducted for profit.
- D. Television or radio antennas exceeding 50 feet above ground level.
[Amended AFTM 11-13-2006, Art. 3, approved 3-6-2007]
- E. Roadside stand for the sale of only the products of the land of the owner of the premises.
- F. Telephone exchange, provided there is no service yard or garage.
- G. The following accessory uses:
 - (1) Garage space for more than two cars if:
[Amended AFTM 11-13-2001, Art. 2, approved 3-15-2002]
 - (a) The lot is 30,000 square feet or less or;
 - (b) The footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure whichever is less.
[Amended AFTM 11-13-2006, Art. 4, approved 3-6-2007]
 - (2) A home occupation. (See §§ 240-162.F(1), 162.F(2) and 162.F(3) for special permit requirements for some home occupations)
[Amended AFTM 11-14-2005, Art. 3, approved 12-8-2005]
 - (3) Scientific research. (See § **240-158**.)
 - (4) The outside parking of more than one commercial light panel, delivery or pickup truck; or any school bus; or any tow truck. For the purposes of this section, temporary parking of school buses for two hours or less per day shall not require the issuance of a special permit, provided no school buses shall be parked on a public way.

[Amended AFTM 11-13-2000, Art. 4, approved 4-11-2001; ATM 4-7-2008, Art. 9, approved 5-20-2008]

- (a) Any motor home, travel trailer or fifth-wheel trailer not located within the minimum front, side (parking) or rear yard setback requirements;
- (b) Any commercially registered vehicle with a gross vehicle weight of more than 13,000 pounds.^[1]

[1] *Editor's Note: Former Subsection G(5), Windmills, which immediately followed this subsection, was repealed ATM 4-8-2013, Art. 7, approved 7-9-2013.*

H. Campgrounds (including all such incidental and accessory activities associated with campgrounds).

I. Boat storage as a commercial operation under the following standards in addition to the requirements of Article **XLII**.

(1) The lot shall be a minimum of two acres.

(2) The side and rear yard setbacks shall be a minimum of 50 feet. Lesser setbacks to a minimum of 30 feet may be allowed when a combination of landscaping and natural features provide visual screening as necessary and in proportion to the need to buffer from adjacent land uses. All allowed structures, fencing and walls must meet these setback requirements. The dimensional requirements of Article **XIV** shall otherwise apply.
[Amended STM 10-25-1989, Art. 69]

(3) Sailboats shall be demasted and no boat on its cradle or other support system shall be higher than 18 feet at any point.
[Amended STM 10-25-1989, Art. 69]

(4) No structure or signs other than security fencing, one security dwelling which meets all other requirements of this district and boat supports shall be allowed. Stacking of boats higher than 18 feet shall be prohibited.

(5) No activity such as cleaning, waxing, repairs or painting shall be allowed. All activities must be specifically approved by the Board of Appeals.

(6) To assure the proposed site shall not be located within developed or established residential neighborhoods, the proposed site shall have a common boundary of not less than 20 feet with an industrial or commercial use (a home occupation does not apply), or be located directly across the street from the same so that if property lines were extended across the street, at least 20 feet of street center line would be common boundary.
[Amended STM 10-25-1989, Art. 69]

(7) This special permit is only for marinas and boatyards within Falmouth's Marine Zoning District.
[Amended STM 10-25-1989, Art. 69]

(8) This special permit shall not apply to any Watershed Protection Overlay District.
[Added ATM 4-3-1989, Art. 43]

J. Common driveway, by special permit from the Planning Board.
[Added AFTM 11-17-1997, Art. 6, approved 2-27-1998]

K. Wind energy systems, subject to the requirements of Article **XXXIV** (34).
[Added ATM 4-8-2013, Art. 7, approved 7-9-2013]

Article VIII. Agricultural Districts

§ 240-34. Permitted residential uses.

Permitted residential uses:

- A. One-family detached houses.

§ 240-35. Permitted community service uses.

[Amended ATM 4-8-1981, Art. 51; ATM 4-2-1984, Art. 59]

Permitted community service uses:

- A. Churches, schools, libraries, museums, parish houses, agricultural research institutions and cemeteries, group day-care homes and child day-care centers.
[Amended ATM 4-6-1992, Art. 13]
- B. Parks, playgrounds, water towers, reservoirs, fire stations, beaches, watershed, Town forests and municipal recreation buildings.
- C. Passenger stations, Town wharves and landings.

§ 240-36. Other permitted principal uses.

Other permitted principal uses:

- A. Agriculture, horticulture and floriculture including farms, cranberry bogs, dairies, truck gardens, greenhouses and natural ice harvesting activities. On lots of two acres or more: nurseries.
[Amended AFTM 12-1-1993, Art. 8, approved 2-25-1994; ASTM 4-13-1998, Art. 13, approved 6-9-1998]
- B. Piers, floats and docks when approved by the Conservation Commission and Selectmen as a common pier, float or dock.
[Added STM 11-1-1988, Art. 56]

§ 240-37. Permitted accessory uses.

Permitted accessory uses:

- A. Such accessory uses as are customarily incidental to any of the above uses.
- B. The taking of four or fewer boarders within a single-family dwelling by a family resident on the premises.
[Amended AFTM 11-18-2002, Art. 3, approved 3-13-2003]
- C. A home occupation. (See § **240-162**.)
[Amended ATM 4-9-1980, Art. 72]
- D. Television or radio antennas not exceeding 50 feet above ground level.
- E. Portable woodworking mill.

- F. Roadside stand for the sale principally of the products of the land of the owner of the premises.

§ 240-38. Special permit uses.

[Amended STM 12-13-1979, Art. 51; ATM 4-9-1980, Art. 72; STM 9-10-1981, Art. 50; ATM 4-5-1984, Arts. 58 and 59; ATM 4-1-1985, Art. 61]

The special permit granting authority for the following uses shall be the Board of Appeals except where noted otherwise within this chapter:

- A. Commercial accommodations. (See Article **XXVII**.)
- B. Private clubs not conducted for profit.
- C. Television or radio antennas exceeding 50 feet above ground level.
- D. Telephone exchange, provided there is no service yard or garage.
- E. Airport or landing strip or pad.
- F. Research and philanthropic institutions.
[Amended ATM 4-6-1988, Art. 53; ATM 4-6-1992, Art. 13; ASTM 4-5-1993, Art. 10, approved 7-16-1993]
- G. The following accessory uses:
- (1) Garage space for more than two cars if:
[Amended AFTM 11-13-2001, Art. 2, approved 3-15-2002]
 - (a) The lot is 30,000 square feet or less or;
 - (b) The footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure whichever is less.
[Amended AFTM 11-13-2006, Art. 4, approved 3-6-2007]
 - (2) A home occupation. (See §§ 240-162.F(1), 162.F(2) and 162.F(3) for special permit requirements for some home occupations)
[Amended AFTM 11-14-2005, Art. 4, approved 12-8-2005]
 - (3) Scientific research. (See § **240-158**.)
 - (4) The outside parking of more than one commercial light panel, delivery or pickup truck; or any school bus; or tow truck. For the purposes of this section, temporary parking of school buses for two hours or less per day shall not require the issuance of a special permit, provided no school buses shall be parked on a public way.
[Amended AFTM 11-13-2000, Art. 4, approved 4-11-2001; ATM 4-7-2008, Art. 9, approved 5-20-2008]
 - (a) Any motor home, travel trailer or fifth-wheel trailer not located within the minimum front, side (parking) or rear yard setback requirements;
 - (b) Any commercially registered vehicle with a gross vehicle weight of more than 13,000 pounds.^[1]
- [1] *Editor's Note: Former Subsection G(5), Windmills, which immediately followed this subsection, was repealed ATM 4-8-2013, Art. 7, approved 7-9-2013.*
- H. Boat storage as a commercial operation under the following standards in addition to the

requirements of Article **XLII**.

[Added ATM 4-7-1986, Art. 89]

- (1) The lot shall be a minimum of two acres.
- (2) The side and rear yard setbacks shall be a minimum of 50 feet. Lesser setbacks to a minimum of 30 feet may be allowed when a combination of landscaping and natural features provide visual screening as necessary and in proportion to the need to buffer from adjacent land uses. All allowed structures, fencing and walls must meet these setback requirements. The dimensional requirements of Article **XIV** shall otherwise apply.
[Amended STM 10-25-1989, Art. 69]
- (3) Sailboats shall be demasted and no boat on its cradle or other support system shall be higher than 18 feet at any point.
[Amended STM 10-25-1989, Art. 69]
- (4) No structure or signs other than security fencing, one security dwelling which meets all other requirements of this district, and boat supports shall be allowed. Stacking of boats higher than 18 feet shall be prohibited.
- (5) No activity such as cleaning, waxing, repairs or painting shall be allowed. All activities must be specifically approved by the Board of Appeals.
- (6) To assure the proposed site shall not be located within developed or established residential neighborhoods, the proposed site shall have a common boundary of not less than 20 feet with an industrial or commercial use (a home occupation does not apply), or be located directly across the street from the same so that if property lines were extended across the street, at least 20 feet of street center line would be common boundary.
[Amended STM 10-25-1989, Art. 69]
- (7) This special permit is only for marinas and boatyards within Falmouth's Marine Zoning District.
[Amended STM 10-25-1989, Art. 69]
- (8) This special permit shall not apply to any Watershed Protection Overlay District.
[Added ATM 4-3-1989, Art. 43]

I. Accessory apartments.

[Added ATM 4-5-1989, Art. 51; amended ASTM 4-2-2001, Art. 12, approved 10-31-2001; ATM 3-7-2003, Art. 17; ATM 4-6-2009, Art. 13, approved 5-5-2009; ATM 4-3-2017, Art. 7, approved 6-14-2017; 11-14-2018 FATM, Art. 14, approved 2-21-2019]

- (1) Purpose. The intent of the Accessory Apartment bylaw is to: broaden the range of housing choice in Falmouth by increasing the number of small dwelling units available for rent; encourage greater diversity of population with particular attention to young adult citizens and to allow for "aging in place" for our senior citizens; promote more economic and energy efficient use of the Town's housing supply. All this while maintaining the appearance and character of the Town's single-family neighborhoods.
- (2) Definitions.

ACCESSORY APARTMENT

Sections **240-3A**, **240-66D** and **240-70D** notwithstanding, an additional dwelling unit, subordinate in size and accessory to the principal dwelling unit on the lot, located in either the principal dwelling or an accessory structure on the lot. An accessory apartment is constructed so as to maintain the appearance and essential character of a single-family dwelling or accessory structure thereto located on the lot.

(3) Requirements.

- (a) Only one accessory apartment shall be allowed per lot.
 - (b) The lot size shall be no less than 7,500 square feet (7,000 square feet minimum in sewer service areas).
[Amended ATM 4-8-2019, Art. 23, approved 7-11-2019]
 - (c) Either the principal dwelling or accessory apartment must be owner-occupied for a period of seven months in every calendar year, or owned by a nonprofit organization or government authority whose purpose is to provide affordable housing.
 - (d) Either the principal dwelling or accessory apartment may be rented, but not both. The owner occupied dwelling cannot be rented while owner is absent. Rental periods shall be no less than six months and weekly/monthly rentals (so-called summer rentals) are expressly prohibited. Neither the principal dwelling nor accessory apartment shall be used as commercial accommodations at any time.
 - (e) The accessory apartment shall have no more than two bedrooms and a maximum of 800 square feet, or 40% of the principal dwelling, whichever is less, as measured using the exterior side of the first floor outside wall. Plus as follows: finished attic space, 50% of first floor; finished half story, 75% of first floor; three-quarter story (gambrel), 90% of first floor; second floor colonial, 100% of first floor; and third floor colonial, 100% of first floor.
 - (f) The footprint of a new detached accessory dwelling unit cannot exceed that of the principal dwelling.
 - (g) An existing dwelling in excess of four bedrooms may convert two of the existing bedrooms into one accessory unit.
 - (h) The total number of bedrooms on the lot shall not exceed four when the lot contains less than 20,000 square feet. A property that has a preexisting bedroom count that exceeds four bedrooms per 20,000 square feet of lot area can maintain that number of current bedrooms but cannot increase.
 - (i) Whether allowed as a matter of right or by special permit, accessory apartments located on lots subject to the provisions of the Water Resource Protection or Coastal Pond Overlay Districts, the total number of bedrooms shall not exceed one per 10,000 square feet of lot area. Properties that preexist with a density greater than one bedroom per 10,000 square feet in a Coastal Pond Overlay District can maintain their existing bedroom count but cannot increase.
 - (j) Owners of properties in a Coastal Pond Overlay District that want to increase the number of bedrooms beyond the density outlined in Subsection **I(3)(i)** can only do so provided that:
 - [1] Both the principal dwelling and accessory apartment are connected to the municipal sewer system and only to the extent allowed within the applicable sewer district bylaw or regulation; or
 - [2] An on-site septic system with enhanced nitrogen removal approved by the Board of Health is installed on the property.
- (4) Design standards. Accessory apartments, whether a part of new construction, reconstruction, alteration or change to a single-family residence or an attached or detached accessory structure, shall maintain the following standards:

- (a) The architectural effect, as the result of the accessory apartment being constructed within the principal dwelling or attached thereto, shall be that of a single-family residence consistent in its exterior character.
- (b) The architectural effect, as the result of the accessory apartment being constructed as a detached accessory structure, shall be that of a structure incidental to a single-family residence and in the same character and period of architecture as the primary residence.
- (c) Parking for the accessory apartment shall be provided on site.

(5) Procedures.

- (a) An accessory apartment constructed within an existing single-family dwelling or an existing accessory structure attached thereto: Prior to the issuance of a building permit for an accessory apartment constructed within a single-family dwelling or accessory structure attached thereto, a Site Plan Review (Design Review), pursuant to Article **XXXIX** of the Zoning Bylaw, shall be conducted by the Planning Board, taking into account the design standards, requirements and purposes of this accessory apartment bylaw. The application for site plan review shall include the information contained in § **240-195C**, unless waived by the Planning Board.
- (b) Accessory apartment constructed within an existing detached accessory structure or within a new detached accessory structure (not attached to a single-family dwelling): In addition to the site plan review requirements above, an accessory apartment built within or as an accessory structure, not attached to a single-family dwelling, shall require a special permit from the Zoning Board of Appeals. In addition to the design standards, requirements and purposes of this accessory apartment bylaw, the Zoning Board of Appeals shall take into account the standards found in § **240-216A** through **I** of this bylaw.

(6) Monitoring.

- (a) An affidavit shall be submitted annually to the Building Commissioner, signed by the property owner, attesting that the principal dwelling or accessory apartment has been owner-occupied for a period of seven months and not otherwise rented as set forth in Subsection **I(3)(c)** above. The Building Commissioner may allow a property owner to be absent during this seven-month period for cause, such as military assignment, work- or health-related issues, academic sabbatical or similar circumstance.

(7) Enforcement.

- (a) Upon a written determination by the Building Commissioner that the property owner has failed to comply with these provisions the property owner shall bring the accessory apartment into compliance within 90 days of such notice. Failing compliance, the property shall be restored to single-family dwelling status within 90 days of said failure determination, in a manner that complies with all requirements of the State Building Code and any other local regulations or bylaws.

J. Golf courses.

[Added ASTM 4-5-1993, Art. 15, approved 7-16-1993]

K. In Agricultural AA and Agricultural A Districts only, a contractor's yard, by special permit from the Planning Board, under the following standards and requirements, in addition to the requirements of Article **XLII**:

[Added ASTM 4-7-1997, Art. 10, approved 7-1-1997; amended AFTM 11-13-2000, Art. 7, approved 4-11-2001]

- (1) The lot shall be a minimum of five acres in AGAA districts and three acres in AGA Districts.
 - (2) The front yard setback shall be a minimum of 75 feet in the AGAA District and 50 feet in the AGA District. The side and rear yard setbacks shall be a minimum of 30 feet. The Planning Board may require greater setbacks where needed to provide sufficient screening and buffer from the street or adjacent properties.
 - (3) No contractor's yard shall be permitted in a Water Resource Protection District.
 - (4) For AGAA Districts the lot shall not be located within 500 feet of a Single Residence District, nor within 500 feet of a dwelling existing or for which construction had commenced as of April 1, 2000. For AGA Districts the lot shall not be located within 300 feet of a Single Residence District nor within 300 feet of a dwelling existing or for which construction had commenced as of April 1, 2000, except a dwelling occupied by the owner/operator of the contractor yard or a designee.
 - (5) No contractor's yard shall be permitted unless the Planning Board shall determine that operation of the contractor's yard, including traffic between the contractor's yard and arterial roadways such as Route 28 or Route 151 Thomas B. Landers Road, Sandwich Road, Old Barnstable Road or Blacksmith Shop Road, will have no adverse impact on a neighborhood predominantly residential in character, and that the construction, width and grades of the adjacent street and any other street providing access between the contractor's yard and any arterial roadway shall be sufficient for safe travel to and from the site by the vehicles to be stored.
 - (6) The Planning Board shall specify hours of operation, the type and number or amount of vehicles, equipment or supplies to be stored, what fabrication of subassemblies shall be allowed, if any, and what accessory activities, such as ordinary maintenance and minor repairs, shall be allowed. No activity such as major repair work, painting or engine cleaning shall be allowed.
- L. Common driveway, by special permit from the Planning Board.
[Added AFTM 11-17-1997, Art. 6, approved 2-27-1998]^[2]
[2] *Editor's Note: This material was originally added as Subsection K, but was redesignated as Subsection L to accommodate the style of the Code.*
- M. The Planning Board may grant a special permit to the owner of any lot(s) not located in a Water Resource Protection District, any portion of which is currently in agricultural use for commercial nursery operations, to devote all or a portion of the lot(s) for the storage of equipment and supplies, and the fabrication of subassemblies, and parking of wheeled equipment, for nonagricultural uses, if the Planning Board finds that:
[Added AFTM 11-13-2000, Art. 8, approved 4-11-2001]
- (1) Such other uses had previously been accessory to the commercial nursery operations;
 - (2) The existing structures, parking, and storage areas, and other physical characteristics of the lot(s) are suitable for the proposed uses;
 - (3) The lot(s) contain a minimum of five acres;
 - (4) Front yard setback shall be a minimum of 75 feet and side yard and rear yard setbacks shall be a minimum of 50 feet, unless the Planning Board finds that a lesser existing setback is adequate to provide sufficient screening and buffer from the street or adjacent properties taking into account existing and potential land uses in the neighborhood;
 - (5) The Planning Board shall determine that the activities, including traffic between the subject

premises and an arterial roadway such as Route 28 or Route 151, Thomas B. Landers Road, Sandwich Road, Old Barnstable Road or Blacksmith Shop Road, will have no adverse impacts on a neighborhood predominantly residential in character, and that the construction, width and grades of the adjacent street and any other street providing access between the subject premises and an arterial roadway shall be sufficient for safe travel to and from the site by the vehicles to be stored;

- (6) The Planning Board shall specify hours of operation, the type and number or amount of vehicles, and the equipment or supplies to be stored;
- (7) Any extension, alteration or change to the activities approved under this section shall only be allowed by the Planning Board, applying the requirements and standards of § **240-216** and Article **XLII** (Special Permits). Any such change, alteration or extension shall not be substantially more detrimental to the neighborhood than the existing activities;
- (8) All reference to "lot(s)" in this section shall mean contiguous lots when more than one lot is considered.

N. In Agricultural A and AA Districts only, wind energy systems subject to the requirements of Article **XXXIV** (34).

[Added ATM 4-8-2013, Art. 7, approved 7-9-2013]

Article IX. Marine Districts

[Amended STM 12-13-1979, Art. 51; ATM 4-9-1980, Art. 72; ATM 4-8-1981, Arts. 48, 51 and 52; STM 9-10-1981, Art. 50; ATM 4-1-1985, Art. 62; ATM 4-6-1987, Art. 60]

§ 240-39. Purpose.

The purpose of this district is to preserve and protect uses which are dependent on access to marine and tidal waters in accordance with the goals and policies of the Federal Coastal Zone Management Act, the Massachusetts Coastal Zone Management Program and the Comprehensive Plan of Falmouth. Other uses which are not directly dependent on access to marine and tidal waters will only be allowed if they are supportive to the principal use and granted by special permit.

§ 240-40. Permitted residential uses.

Permitted residential uses:

- A. None.

§ 240-41. Permitted community service uses.

Permitted community service uses:

- A. Parks, playgrounds, beaches, Town forests, public museums and municipal recreation buildings or structures.

[Amended AFTM 11-15-1999, Art. 3, approved 3-22-2000]

- B. Passenger stations, Town wharves and landings.

§ 240-42. Permitted business, commercial and industrial uses:

Permitted business, commercial and industrial uses:

- A. Marinas and boatyards including:
 - (1) Moorings, landings and wharves for recreational and commercial boats;
 - (2) Boat sales, brokerage and rentals;
 - (3) Boatbuilding, repair and storage; and
 - (4) Retail sales and service when principally marine-related.
- B. Oceanographic, or marine-related, scientific research and equipment manufacture and testing.

§ 240-43. Permitted accessory uses.

The determination of principal and accessory will include consideration for seasonal changes in marine businesses and the wide range of marine-related items serviced and sold.

- A. Such accessory uses as permitted by definition.
- B. Television or radio antennas not exceeding 50 feet above ground level.
- C. One dwelling unit on each parcel of land, the purpose of which is to house the owner or employee of the use as permitted under § **240-42**.
- D. Construction or manufacture of items related to or incidental to the operations associated with boatbuilding including glass fiber laminates, woodworking and metal fabrication.
- E. Navigation aids.

§ 240-44. Special permit uses.

Uses allowed on special permit from the Board of Appeals:

- A. Private clubs not conducted for profit.
- B. Restaurants or other places serving food provided that such use will utilize no more than 25% of the floor area of structures on the property; or as otherwise limited by § **240-45**.
[Amended ATM 4-3-1989, Art. 40]
 - (1) Class I and Class II restaurants, subject to the restrictions of § **240-44B** Class III and Class IV restaurants are expressly prohibited in Marine Districts.
[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]
- C. Business or professional offices provided that such use will utilize no more than 50% of the floor area of structures on the property; or as otherwise limited by § **240-45**.
- D. Non-marine-related retail sales and service as an activity separate from any permitted uses provided that such use will utilize no more than 50% floor area of structures on the property; or as otherwise limited by § **240-45**.
- E. Antennas exceeding 50 feet above ground level of lots.

§ 240-45. Additional standards for uses allowed by special

permit.

Additional standards for uses allowed by special permit:

- A. The total floor area of non-marine-related uses shall be no more than twenty-five hundredths (0.25) times the total square footage area of the lot and the resulting total floor area of all uses shall be no more than five-tenths (0.5) times the total square footage of the lot.
- B. Public amenities; e.g., launching ramps, access to the waterfront, public fishing areas and visual access to the water, must be considered wherever there is no threat to public health and safety, or unreasonable liability to the property owner.
- C. A projection of the cumulative impact on water quality with the change in use together with a nutrient analysis of the receiving waters may be required. Restrictions designed to protect or improve water quality may be imposed such as requirements for vegetated buffer strips, a maximum floor area for site and controls on existing or proposed uses which in operation tend to degrade water quality.
- D. In no case shall non-marine-related uses displace more than 50% of the total floor area of structures on the site.

Article X. Business Districts

§ 240-46. Permitted residential uses.

Permitted residential uses:

- A. One-family detached houses.
- B. Semidetached and two-family dwellings.
- C. Public or nonprofit housing for the elderly. (See § **240-164**.)
[Amended ATM 4-8-1981, Art. 54; ATM 4-6-1992, Art. 23]

§ 240-47. Permitted community service uses.

Permitted community service uses:

- A. Churches, schools, libraries, museums, parish houses, hospitals, sanatoria, educational, research and philanthropic institutions, cemeteries.
- B. All municipal purposes, including the administration of government, parks, playgrounds, recreation buildings, Town forests, watershed, water towers and reservoirs, beaches, fire and police stations and armories.
- C. Passenger stations, Town wharves and landings.

§ 240-48. Permitted business and commercial uses.

[Amended ATM 4-7-1979, Art. 102]

Permitted business and commercial uses:

- A. Retail sales not more specifically listed. (Allowed in a B-3 District only if each establishment occupies no more than 4,000 square feet gross floor area.)
[Amended ATM 4-7-1982, Art. 50]
- B. Business or professional offices, bank, medical clinic, computer center.
- C. Personal and household services. (Allowed in a B-3 District only if each establishment occupies no more than 4,000 square feet gross floor area.)
[Amended ATM 4-7-1982, Art. 50]
- D. Restaurant or other place for serving food, except fast-food restaurants.
 - (1) Class I restaurants in all Business Districts; Class II restaurants in Business 2 and Business 3 only; Class III Restaurants in Business 2 only.
[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]
- E. Arts and crafts, without continuous production.

§ 240-49. Other permitted principal uses.

[Amended STM 10-27-1982, Art. 64; ATM 4-5-1983, Art. 57]

Other permitted principal uses:

- A. Agriculture, horticulture and floriculture including farms, cranberry bogs, dairies, truck gardens, greenhouses and natural ice harvesting activities.
- B. Marinas: landings and wharves for party boats not exceeding 33 feet in length at the waterlines; renting of rowboats, sailboats, motorboats and fishing tackle; retail sale of fish bait; marine railways; boatbuilding, repairs and storage.

§ 240-50. Permitted accessory uses.

Permitted accessory uses:

- A. Such accessory uses as are customarily incidental to any of the above uses except that the outdoor display and/or storage of goods and merchandise for sale is permitted only when such display and/or storage is wholly incidental and secondary to a primary use conducted within the permanent structure on the lot. No such display and/or storage may occur in delineated parking spaces, traffic lanes, crosswalks, sidewalks and front yards, except in a B-1 District where the reference to sidewalks means Town sidewalks. No additional signs are permitted.
[Amended ATM 4-7-1982, Art. 52]
- B. The taking of four or fewer boarders within a single-family dwelling by a family resident on the premises.
[Amended AFTM 11-18-2002, Art. 3, approved 3-13-2003]
- C. A home occupation. (See § **240-162.**)
[Amended ATM 4-9-1980, Art. 72]
- D. Television or radio antennas not exceeding 50 feet above ground level.
- E. Portable woodworking mill.

§ 240-51. Special permit uses.

[Amended ATM 4-4-1979, Art. 102; ATM 4-8-1981, Art. 57]

Uses allowed on special permit from the Board of Appeals:

A. In B-1, B-2 and B-3 Districts:

- (1) Commercial accommodations. (See Article **XXVII**.)
- (2) Conversion of a dwelling in existence on the lot as of 1 January 1980 into up to four dwelling units if the conversion involves no material change to the exterior of the existing dwelling, and if the Board of Appeals determines that the size of the dwelling and the lot are suitable for the remodeling.
[Amended ATM 4-8-1981, Art. 48; ATM 4-1-1985, Art. 62; AFTM 11-14-1994, Art. 3]
- (3) Private clubs not conducted for profit.
- (4) Television or radio antennas exceeding 50 feet above ground level.
- (5) Multifamily use if the Board of Appeals finds: that the public good will be served; that the business zoned area would not be adversely affected; and that the uses permitted in the zone would not be noxious to a multifamily use. The density of any approved proposal shall not exceed six units per acre.
[Amended ATM 4-7-1982, Art. 5; STM 4-3-2012, Art. 4, approved 5-4-2012]
- (6) Docking of commercial passenger or freight vessels, party boats exceeding 33 feet at the waterline.
- (7) Airport or landing strip or pad.
- (8) Telephone exchange, provided there is no service yard or garage.
- (9) Scientific research and that the applicant for a building or an occupancy permit demonstrates to the Building Commissioner and the Board of Health on an annual basis that all federal, state and Town of Falmouth licenses, permits and standards for handling, use, storage and disposal of any regulated materials have been obtained or met. There may be accessory to said scientific research the production of related materials for the furtherance of such research. Such production shall be clearly accessory to the primary scientific research activity; shall not utilize in excess of 25% of the interior floor space or 6,000 square feet, whichever is lesser; shall not involve more than 25% of the employees and shall not produce any noxious odors or excessive noise, such as to be detectable on abutting properties.
[Amended ATM 4-5-1983, Art. 57; ATM 4-2-1990, Art. 24; ASTM 4-7-1993, Art. 20, approved 7-16-1993]
- (10) The outdoor display and/or storage of goods and merchandise for sale other than as permitted under § **240-50A**. The issues raised in § **240-50A** shall be issues to be considered in addition to those specified in § **240-216**.
[Added ATM 4-7-1982, Art. 52]
- (11) [Added STM 11-1-1988, Art. 59; amended ATM 12-16-1991, Art. 2; STM 4-8-2003, Art. 3]
 - (a) By special permit from the Planning Board: any new construction of a business or commercial shopping center with a proposed gross floor area of 7,000 square feet or more.
 - (b) By special permit from the Board of Appeals: any change, alteration, modification, or addition to an existing business or commercial shopping center that would result in a building with a gross floor area of 10,000 square feet or more.

(12) (Reserved)^[1]

[1] *Editor's Note: Former Subsection A(12), Windmills, added STM 9-10-1981, Art. 50, was repealed ATM 4-8-2013, Art. 7, approved 7-9-2013.*

(13) Common driveway, by special permit from the Planning Board.

[Added AFTM 11-17-1997, Art. 6, approved 2-27-1998]

B. In B-1 and B-2 Districts only:

(1) Blacksmith, builder, carpenter, mason, plumber, roofer, tinsmith, undertaker and similar uses which the Board of Appeals may in specific instances find to be compatible with the uses mentioned above.

(2) Theaters, moving picture shows, bowling alleys, skating rinks, but not to include billiard rooms and similar commercial amusement places with automated amusement devices except as provided in Article **XXXIII** herein.

[Amended STM 10-26-1982, Art. 59; ATM 4-6-1992, Art. 26]

(3) Motor vehicle service stations, motor vehicle sales or rental with or without ancillary service facilities, stables and parking facilities where a fee is to be charged. (See § **240-148**.) On special permit from the Board of Appeals, parking facilities where a fee is to be charged, or to serve uses within the Marine District, shall also be allowed in a B-3 District within 500 feet of a Marine District.

[Amended AFTM 11-13-2001, Art. 9, approved 3-15-2002]

C. In B-2 Districts only:

(1) Fast-food restaurants. All fast-food restaurants, regardless of gross floor area, shall be subject to § **240-220**, Multiple review.

[Amended ATM 4-6-1992, Art. 10]

(a) Class IV restaurant. All Class IV restaurants, regardless of gross floor area, shall be subject to § **240-220**, Multiple review. Class IV restaurants are expressly prohibited in Business 1 and Business 3 Zoning Districts.

[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]

(2) Motor vehicle repair when not ancillary to motor vehicle sales.

(3) Nursing homes.

[Added ASTM 4-5-1993, Art. 10, approved 7-16-1993]

(4) RDNA technology (genetic engineering) to be employed in production and research upon a finding by the Board of Appeals that the site is suitable and upon receipt of acceptable referral from the Board of Health and the Hazardous Materials Coordinator. Such amendment to the Zoning Bylaws cited shall not take effect until a Board of Health regulation outlining controls and procedures for using RDNA materials has been promulgated.

[Added ASTM 4-5-1993, Art. 22, approved 7-16-1993]

(5) In Business 2 Districts only, wind energy systems subject to the requirements of Article **XXXIV** (34), and marijuana treatment centers. [See Article **XLVII** (47).]

[Added ATM 4-8-2013, Art. 7, approved 7-9-2013; amended ATM 4-7-2014, Art. 7, approved 5-13-2014]

D. In Business 1 Districts only: Class II.

[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]

- E. In Business 3 Districts only: Class III restaurant.
[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]

Article XI. Light Industrial A Districts

§ 240-52. Permitted residential uses.

[Amended ATM 4-8-1981, Art. 53]
Permitted residential uses:

- A. None.

§ 240-53. Permitted community service uses.

Permitted community service uses:

- A. Churches, schools, libraries, museums, parish houses, hospitals, sanatoria, education, research and philanthropic institutions, cemeteries.
- B. All municipal purposes, including the administration of government, parks, playgrounds, recreation buildings, Town forests, watershed, water towers and reservoirs, beaches, fire and police stations and armories.
- C. Passenger stations, Town wharves and landings.

§ 240-54. Permitted business, commercial and industrial uses.

[Amended ATM 4-4-1979, Art. 102]
Permitted business, commercial and industrial uses:

- A. Retail sales not more specifically listed.
- B. Business or professional offices, bank, medical clinic, computer center.
- C. Personal and household services.
- D. Restaurant or other place for serving food, except fast-food restaurants.
 - (1) Class I, Class II and Class III restaurants. Class IV restaurants are expressly prohibited in Light Industrial A Districts.
[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]
- E. Arts and crafts.
[Amended ATM 4-5-1983, Art. 56]
- F. Converting, fabricating, manufacturing, altering, finishing or assembling, provided that not more than one person shall be so employed for each 35 square feet of floor area and in no case shall a total of more than 10,000 square feet of floor area of a building be devoted to such use. Boatyards and buildings thereon and electronics plants and buildings shall be exempt from the provisions of this subsection.
- G. Research and development.
[Amended ATM 4-5-1983, Art. 56]

§ 240-55. Other permitted principal uses.

Other permitted principal uses:

- A. Agriculture, horticulture and floriculture including farms, cranberry bogs, dairies, truck gardens, greenhouses and natural ice harvesting activities.
- B. Marinas: landing and wharves for party boats not exceeding 33 feet in length at the waterline; renting of rowboats, sailboats, motorboats and fishing tackle; retail sale of fish bait; marine railways; boatbuilding, repairs and storage.
- C. Scientific research provided that it shall not involve genetic engineering and that the applicant for a building or occupancy permit demonstrates to the Building Commissioner and Board of Health on an annual basis that all federal, state and Town of Falmouth licenses, permits and standards for the handling, use, storage and disposal of any regulated materials have been obtained or met. Said research shall not produce toxic and/or hazardous wastes as a byproduct. There may be accessory to said scientific research the production of related materials for the furtherance of such research. Such production shall be clearly accessory to the primary scientific research activity; shall not involve the outside storage of materials; and shall not produce any noxious odors or excessive noise, such as to be detectable on abutting properties.

[Added STM 10-27-1982, Art. 64; amended ATM 4-5-1983, Art. 56]

§ 240-56. Permitted accessory uses.

Permitted accessory uses:

- A. Such accessory uses as are customarily incidental to any of the above uses to include the outside storage of units converted, fabricated, manufactured, altered, finished or assembled.
[Amended ATM 4-6-1987, Art. 67]
- B. The taking of four or fewer boarders within a single-family dwelling by a family resident on the premises.
[Amended AFTM 11-18-2002, Art. 3, approved 3-13-2003]
- C. A home occupation. (See § **240-162**.)
[Amended ATM 4-9-1980, Art. 72]
- D. Television or radio antennas not exceeding 50 feet above ground level.
- E. Portable woodworking mill.

§ 240-57. Special permit uses.

[Amended ATM 4-8-1981, Arts. 48, 53 and 57]

Uses allowed on special permit from the Board of Appeals:

- A. Commercial accommodations. (See Article **XXVII**.)
- B. Private clubs not conducted for profit.
- C. Television or radio antennas exceeding 50 feet above ground level.
- D. Multifamily use, if the Board of Appeals finds:

[Amended STM 4-3-2012, Art. 4, approved 5-4-2012]

- (1) That the public good will be served,
- (2) That the industrial zoned area would not be adversely affected, and
- (3) That the uses permitted in the zone would not be noxious to a multifamily use.

The density of any approved proposal shall not exceed six units per acre

[Amended ATM 4-7-1982, Art. 51]

- E. Blacksmith, builder, carpenter, mason, plumber, roofer, tinsmith, undertaker and similar uses which the Board of Appeals may in specific instances find to be compatible with the uses mentioned above.
- F. Theaters, moving-picture shows, bowling alleys, skating rinks, but not to include billiard rooms and similar commercial amusement places with automated amusement devices, except as provided in § **240-165** herein.
[Amended ATM 4-6-1992, Art. 26]
- G. Motor vehicle service stations, motor vehicle sales, stables and parking facilities where a fee is to be charged (see § **240-148**), automobile repair shops, whether ancillary to sales or not.
- H. Lumber, fuel, feed and ice establishments, contractors' yards.
[Amended ATM 4-5-1983, Art. 56]
- I. Docking of commercial passenger or freight vessels; party boats exceeding 33 feet at the waterline.
- J. Airport or landing strip or pad.
- K. Telephone exchange.
- L. The following accessory uses:
[Amended ATM 4-9-1980, Art. 52; STM 9-10-1981, Art. 50; ATM 4-5-1983, Art. 56]
 - (1) A home occupation. (See § **240-162F**.)
 - (2) One dwelling unit if accessory to a permitted use and if for security purposes.^[1]
^[1] *Editor's Note: Former Subsection L(3), Windmills, which immediately followed this subsection, was repealed ATM 4-8-2013, Art. 7, approved 7-9-2013.*
- M. Any business or commercial shopping center with proposed gross floor area of 10,000 square feet or more.
[Added ATM 4-6-1992, Art. 15]
- N. Common driveway, by special permit from the Planning Board.
[Added AFTM 11-17-1997, Art. 6, approved 2-27-1998]
- O. Wind energy systems, subject to the requirements of Article **XXXIV** (34).
[Added ATM 4-8-2013, Art. 7, approved 7-9-2013]

Article XII. Light Industrial B Districts

§ 240-58. Permitted residential uses.

[Amended ATM 4-4-1979, Art. 102; ATM 4-7-1986, Art. 68]

Permitted residential uses:

- A. None.

§ 240-59. Permitted community service uses.

Permitted community service uses:

- A. Churches, schools, libraries, museums, parish houses, hospitals, sanatoria, educational, research and philanthropic institutions, cemeteries.
- B. All municipal purposes, including the administration of government, parks, playgrounds, recreation buildings, Town forests, watershed, water towers and reservoirs, beaches, fire and police stations and armories.
- C. Passenger stations.

§ 240-60. Permitted business, commercial and industrial uses.

[Amended ATM 4-4-1979, Art. 102]

Permitted business, commercial and industrial uses:

- A. Retail sales not more specifically listed.
- B. Business or professional offices, bank, medical clinic, computer center.
- C. Personal and household services.
- D. Restaurant or other place for serving food, except fast-food restaurants.
 - (1) Class I and Class II restaurants.
[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]
- E. Arts and crafts.
[Amended ATM 4-3-1983, Art. 56]
- F. Converting, fabricating, manufacturing, altering, finishing or assembling, provided that not more than one person shall be so employed for each 35 square feet of floor area and in no case shall building coverage be greater than 30% and as otherwise restricted by § **240-69** of this chapter.
[Amended STM 9-10-1981, Art. 48; ATM 4-7-1986, Art. 68]
- G. Research and development.
[Amended ATM 4-5-1983, Art. 56]
- H. Roadside stand.
- I. Ground-mounted solar photovoltaic array.
[Added 9-14-2020 AFTM by Art. 22, approved 12-22-2020.]

§ 240-61. Other permitted principal uses.

Other permitted principal uses:

- A. Agriculture, horticulture and floriculture including farms, cranberry bogs, dairies, truck gardens, greenhouses and natural ice harvesting activities. If involving the raising and keeping of livestock other than for the private use of the residents of the premises, only on parcels of five acres or larger.
- B. Scientific research, provided that the applicant for a building or occupancy permit demonstrates to the Building Commissioner and the Board of Health on an annual basis that all federal, state and Town of Falmouth licenses, permits and standards for handling, use, storage and disposal of any regulated materials have been obtained or met. There may be accessory to said scientific research the production of related materials for the furtherance of such research. Such production shall be clearly accessory to the primary scientific research activity; shall not involve the outside storage of materials; and shall not produce any noxious or excessive noise, such as to be detectable on abutting properties.
[Added STM 10-27-1982, Art. 64; amended ATM 4-5-1983, Art. 56; ASTM 4-5-1993, Art. 21, approved 7-16-1993; AFTM 11-30-1993, Art. 3, approved 2-25-1994]

§ 240-62. Permitted accessory uses.

[Amended ATM 4-9-1980, Art. 72; ATM 4-7-1986, Art. 68]

Permitted accessory uses:

- A. Such accessory uses as are customarily incidental to any of the above uses.
- B. Television or radio antennas not exceeding 50 feet above ground level.
- C. Ground-mounted solar photovoltaic array.
[Added 9-14-2020 AFTM by Art. 22, approved 12-22-2020.

§ 240-63. Special permit uses.

[Amended ATM 4-8-1981, Art. 48, ATM 4-8-1981, Art. 53]

Uses allowed on special permit from the Board of Appeals:

- A. Private clubs not conducted for profit.
- B. Television or radio antennas exceeding 50 feet above ground level.
- C. Blacksmith, builder, carpenter, mason, plumber, roofer, tinsmith, undertaker and similar uses which the Board of Appeals may in specific instances find to be compatible with the uses mentioned above.
- D. Theaters, moving-picture shows, bowling alleys, skating rinks, but not to include billiard rooms and similar commercial amusement places with automated amusement devices.
- E. Lumber, bulk fuel, feed and ice establishments, contractor yards and automobile repair shops.
[Amended ATM 4-5-1983, Art. 56]
- F. Airport or landing pad or strips.
- G. The following accessory uses:
[Amended ATM 4-9-1980, Art. 52; ATM 4-5-1983, Art. 56; ATM 4-7-1986, Art. 68]

- (1) Garage space for more than two cars.^[1]

[1] *Editor's Note: Former Subsection G(5), Windmills, amended AFTM 11-14-2005, approved 12-8-2005, which immediately followed this subsection, was repealed ATM 4-8-2013, Art.*

7, approved 7-9-2013.

- H. Any business or commercial shopping center with proposed gross floor area of 10,000 square feet or more.
[Added ATM 4-6-1992, Art. 15]
- I. RDNA technology (genetic engineering) to be employed in production and research upon a finding by the Board of Appeals that the site is suitable and upon receipt of acceptable referral from the Board of Health and the Hazardous Materials Coordinator. Such amendment to the Zoning Bylaws cited shall not take effect until a Board of Health regulation outlining controls and procedures for using RDNA materials has been promulgated.
[Added ASTM 4-5-1993, Art. 22, approved 7-16-1993]
- J. Common driveway, by special permit from the Planning Board.
[Added AFTM 11-17-1997, Art. 6, approved 2-27-1998]
- K. Class III restaurants. Class IV restaurants are expressly prohibited in Light Industrial B Districts.
[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]
- L. Wind energy systems, subject to the requirements of Article **XXXIV** (34).
[Added ATM 4-8-2013, Art. 7, approved 7-9-2013]

Article XIII. Light Industrial C Districts

[Added AFTM 11-7-2011, Art. 3, approved 1-31-2012^[1]]

[1] *Editor's Note: This article also repealed former Art. XIII, Buffer Space District, added ATM 4-8-1981, Art. 49.*

§ 240-64. (Reserved)

§ 240-64.1. Permitted residential uses.

None.

§ 240-64.2. Permitted community service uses.

None.

§ 240-64.3. Permitted business, commercial and industrial uses.

- A. Contractors yards as defined.
- B. Wholesale (to the trades) supply.
- C. Warehousing and storage buildings.
- D. Ground-mounted solar photovoltaic array.

§ 240-64.4. Permitted accessory uses.

- A. Television, radio or similar towers, not exceeding 50 feet in height.
- B. Support office facilities, accessory to a permitted use.
- C. Fabrication of sub assemblies associated with contractor trades.

§ 240-64.5. Special permit uses.

- A. Television, radio or similar towers exceeding 50 feet in height.
- B. Restaurant or other place for serving food, except that the Board of Appeals shall permit operation for breakfast and lunch hours only.
- C. Wind energy systems, subject to the requirements of Article **XXXIV** (34).
[Added ATM 4-8-2013, Art. 7, approved 7-9-2013]
- D. By special permit from the Planning Board, waste disposal contractor use, including a handling facility where solid waste, noncompostable bulky wastes, commercial solid waste, recyclable material, asphalt pavement, brick and concrete, and construction and demolition waste is brought, sorted, temporarily stored and/or transferred from one vehicle or container to another vehicle or container for transport off site to a recycling or solid waste treatment, processing or disposal facility. Compostable materials, commercial organic material, and compostable bulky wastes, may be brought to the site and composted on site. Any materials, equipment, or vehicles used in connection with waste disposal may be stored, parked, serviced and maintained at the site. The following requirements shall apply in addition to the requirements § **240-216** of the zoning bylaw pertaining to the issuance of special permits:
[Added AFTM Art. 10, 11-17-2014, approved 2-19-2015]
 - (1) The lot shall have a minimum lot area of five acres;
 - (2) Waste disposal contractor use shall not be permitted in a Water Resource Protection District;
 - (3) Any site granted a special permit shall be further subject to the requirements of the Massachusetts Department of Environmental Protection.
 - (4) All terms used in § **240-64.5D** shall have the meanings defined in all applicable Massachusetts Department of Environmental Protection regulations or any such regulations successor thereto.
 - (5) No special permit may issue unless the applicant incorporates procedures and practices in accordance with all applicable Massachusetts Department of Environmental Protection regulations.

§ 240-65. (Reserved)

Article XIII.A. Senior Care Retirement District

[Added AFTM 11-18-2002, Art. 4, approved 3-13-2003; amended AFTM 11-10-2008, Art. 6, approved 1-6-2009]

§ 240-65.1. Purpose.

The purpose of this district is to allow for alternative housing for senior citizens in a setting that provides them with personal and health-related services and programs and allows for their maximum independence.

§ 240-65.2. Permitted residential uses.

- A. One-family detached houses.
- B. Public or nonprofit housing for the elderly subject to the requirements of § **240-164**.

§ 240-65.3. Permitted business uses.

- A. Medical clinics, medical and allied health offices.
- B. Bank, professional offices.
- C. Class I or Class II restaurant.

§ 240-65.4. Uses allowed by special permit from the Planning Board.

- A. Senior Care Retirement Community (SCRC), under the following standards and requirements:
 - (1) A SCRC contains one or more residential buildings with living units described below, which provide residences exclusively for persons 62 years of age or older (except their spouses and surviving spouses, and also except for staff housing and skilled nursing units), and which includes common areas and community dining facilities, and which provides personal services such as social, psychological, educational and health-related programs and services, designed to allow residents to safely "age in place" with maximum independence and with skilled caregivers available continuously on-site.
 - (2) A SCRC may include independent living units (ILUs) for persons who may not require regular assistance with daily living, as well as assisted living units (ALUs) for persons in need of daily assistance from skilled caregivers, and may include skilled nursing rooms (SNRs), as defined by the Massachusetts Department of Public Health. For the purposes of this bylaw, ILUs, ALUs and SNRs shall be known as "SCRC" units. A SCRC may also include staff housing units, provided that the number of staff units shall not exceed 10% of the SCRC units. The total number of units in the development, including both SCRC units and staff housing as determined by the Planning Board, shall not exceed six units per acre. No unit may contain more than two bedrooms. Assisted living units shall be no less than 350 but no greater than 800 square feet in size. Each skilled nursing room may contain no more than two beds.
 - (3) A SCRC shall have a minimum total area of 15 acres and lot frontage of 100 feet. In calculating the minimum total area the provisions of § **240-124A** shall apply. At least 65% of the total area must be set aside as open space consistent with § **240-130** of the Zoning Bylaw. Up to one-third or five acres of the required open space, whichever is greater, may be located off-site at the discretion of the Planning Board.
[Amended AFTM 11-9-2009, Art. 4, approved 2-5-2010]

- (4) Front yard building setbacks shall be a minimum of 50 feet. Side and rear yard building setbacks shall be a minimum of 25 feet. The Planning Board may require greater setbacks, up to 100 feet for front yard and up to 50 feet for rear and side yard setbacks where needed to provide screening and buffer from the street or adjacent properties. Redevelopment of existing buildings may maintain existing setbacks at the discretion of the Planning Board. Redevelopment does not include the voluntary demolition of an existing building and subsequent rebuilding.
- (5) The maximum building height of any SCRC building shall be no more than three stories, not to exceed 35 feet as defined for community service uses. The Planning Board in its discretion may increase this height to 45 feet, upon good cause shown by the applicant, provided that for every one-foot increase in height all minimum setbacks are increased by two feet.
- (6) The development may incorporate within a residential building accessory facilities intended solely for the use or benefit of the residents and staff of the development, such as banking and recreational facilities, as limited and approved by the Planning Board.
- (7) The Planning Board, in order to approve the special permit for a SCRC, must find that the overall impacts of the SCRC in terms of traffic, wastewater, nutrient loading and fiscal impact to the Town will be no greater than the impacts associated with other uses allowed as a matter of right or special permit within Single Residence or Agricultural Zoning Districts on the lot(s). Speculative uses, such as applications made under M.G.L. c. 40B, shall not be considered in making the comparison of cumulative impacts. The Planning Board may require the applicant to provide specialized studies or information as necessary in order to make such a finding.
- (8) The Planning Board shall not approve a SCRC unless tertiary treatment of wastewater is provided. Tertiary treatment shall include enhanced nitrogen removal consistent with **§ 240-100A(3)** of the Zoning Bylaw when a SCRC is located in a coastal pond overlay district.
- (9) The Planning Board may require the applicant to reduce the size including the height of any residential structure or to adjust its placement on the lot to reduce impacts on neighborhood visual character, including views or vistas. The Planning Board, in order to approve the special permit for a SCRC, must make a positive finding under **§ 240-122G**, of the Planned Residential Development Bylaw and four or more of the purposes of **§ 240-122**. The Planning Board may require or allow that the development be constructed in phases if necessary to minimize neighborhood impacts or to meet financing or regulatory requirements.
- (10) Parking shall be located in side or rear yards behind the front facade line of the building, except that parking may be allowed in front of the building line at the discretion of the Planning Board if appropriately screened or landscaped as determined by the Planning Board. The number of parking spaces shall be determined according to the following: one space per independent living unit; one-half space per assisted living unit; one space per employee. The Planning Board may apply parking reductions to a SCRC as provided for in **§ 240-107** as part of this special permit.
- (11) Section **240-65.4A(2)** notwithstanding, a density bonus maybe allowed, at the sole discretion of the Planning Board as part of the special permit process for a Senior Care Retirement Community, up to a total of eight units per acre, if the applicant provides at least 15% of the SCRC units (not including staff units) as affordable, subject to the requirements below, and one or more of the following: a) tertiary treatment of wastewater that achieves an annual average nitrogen reduction to a level of nine mg/l or less, or; b) the application results in no net increase in nitrogen loading or; c) the SCRC is tied into the

municipal sewer system.

As a condition of any density bonus the applicant shall be required to execute an affordable housing restriction and regulatory agreement for recordation at the Registry of Deeds, consistent with the requirements of the Massachusetts Department of Housing and Community Development, for qualification of the affordable units towards the Town's subsidized housing inventory.

§ 240-65.5. Minimum lot dimensions for uses allowed under §§ 240-65.2 and 240-65.3.

- A. Minimum lot size: 45,000 square feet.
- B. Lot frontage: 100 feet.
- C. Lot width: 150 feet.
- D. Lot coverage by structures: 20%; lot coverage by structures, paving and parking: 40%.
[Added AFTM 11-9-2009, Art. 3, approved 2-5-2010]

Article XIV. Dimensional Regulations

§ 240-66. General regulations.

- A. Applicability. The erection, extension or moving of a structure or the creation or change in size or shape of a lot (except through a public taking) must meet the minimum requirements set forth in Article **XIV**, unless otherwise expressly provided by this chapter or by MGL c. 40A, § 6. The shape of two or more contiguous existing lawful building lots may be changed provided the area of each lot remains the same or meets the current minimum requirements in the zoning district and the total number of buildable lots is the same or less. No lot reconfigured under this section shall lose its buildable status, and no lot shall be made nonconforming.
[Amended ATM 11-17-2003, Art. 2]
- B. Where a lot is formed from a part of a lot already occupied by a building, such separation shall be affected in such a manner as not to impair any of the requirements of this chapter with respect to the existing building and all yards and other open spaces in connection therewith, and no permit shall be issued for the erection of a new building on the new lot thus created unless it complies with all provisions of this chapter.
[Added STM 10-15-1987, Art. 58]
- C. Nonconforming lots. Except as provided in Subsection **C(1)**, any nonconforming lot having at least 20 feet of frontage on a street shall be eligible to apply for a building permit if it conforms to the provisions of any of the following Subsections **C(1)** through **C(7)**:
[Amended ATM 4-7-1982, Art. 56; ATM 4-2-1990, Art. 12]
 - (1) Any increase in area, or lot width requirements in the Zoning Bylaw shall not apply to a lot shown on a plan or described in a deed duly recorded at the Registry of Deeds as of 1 January 1981 for single-family residential use which at the time of the Zoning Bylaw change was not held in common ownership with any adjoining land, not otherwise protected by MGL c. 40A, § 6, conformed to then-existing requirements and had at least 7,500 square feet of area and 50 feet of frontage.
 - (2) Any lot not held in common ownership with any adjoining land as of 1 January 1981, not

protected by Subsection **C(1)**, shall be eligible to apply for a building permit if the lot has at least:

- (a) Forty thousand square feet or area in an AGAA/RAA District;
- (b) Twenty thousand square feet of area in an AGA/RA/PU District;
- (c) Ten thousand square feet of area in an AGB/RB District; or
- (d) Seven thousand five hundred square feet of area in an RC/GR District for single-family construction only.

[Amended ATM 4-6-1987, Art. 63]

- (3) Any lot not held in common ownership with adjoining land as of 1 January 1981, not protected by Subsection **C(1)** and **(2)**, may apply to the Zoning Board of Appeals for a special permit to construct a single-family residence, if the lot has at least 7,200 square feet of area. If the petitioner's lot is located within a Water Resource Protection District, or within 300 feet of an estuary, hereinafter defined a saltwater passage wherein the tide meets a flow of freshwater, or within 300 feet of a tidal marsh, tidal pond, tidal river as defined or within 300 feet of a water body listed in § **240-100A, B** or **C** of the Coastal Pond Overlay District, the Board of Appeals shall require information on the location of public and private wells within 300 feet of the site; a nutrient analysis of the receiving waters, taken from the site or from adjacent, undersized lots; a projection of the cumulative impact on water quality with the increased density; and a determination that the majority of the lots within the neighborhood are already developed in addition to the criteria specified in § **240-216**. The Board of Appeals is encouraged to refer the petition to the Board of Health, the Board of Public Works and the Planning Board, in accordance with § **240-219**. These additional criteria and the responses of the Boards to which the petition is referred shall become a part of the decision. The Board of Appeals may impose certain restrictions designed to protect or improve the water quality of the area, such as, but not limited to requirement to keep the lot in its natural vegetation; maximum floor/area ratio; limitations in other ordinarily permitted uses which would tend to degrade the water quality; seasonal uses; or other health and environmental hazards.

[Amended AFTM 11-9-2009, Art. 8, approved 2-5-2010]

- (4) Any lot held in common ownership with such adjoining lots, vacant as of 1 January 1981, may be treated as not held in common ownership if, as of 1 January 1981, a dwelling was in existence on all the other commonly held, contiguous lots, or if subsequent to 1 January 1981 the lot was no longer held in common ownership and a dwelling was permitted by special permit on each of such adjoining lots.

[Amended ATM 4-5-1983, Art. 58; ATM 4-6-2009, Art. 9, approved 5-5-2009]

- (5) Any lot not held in common ownership with any land as of 1 January 1981, not protected by Subsections **C(1)** or **(2)**, may be eligible to apply for a building permit, without the benefit of the special permit required under Subsection **C(3)**, if the petitioner acquires another undersized vacant lot within the subdivision or immediate surrounding neighborhood and duly records at the Registry of Deeds a covenant running in favor of the Town prohibiting the erecting of any structure thereon; or if the petitioner acquires the development rights on another undersized vacant lot within the same subdivision and covenants a permanent development restriction against these development rights on this lot, such that the total of the area of the lot to be built upon plus the assignable area of the lot to be restricted equal the minimum size requirements of Subsection **C(2)**. More than one petitioner may participate in the acquisition of the undersized vacant lot or the entire lot, and as long as the sum of the restricted development area assignable to each petitioner does not exceed the sum of the area of the restricted lot.

[Amended ATM 4-7-1986, Art. 75]

- (6) Any lot held in common ownership with any adjoining land as of 1 January 1981, not protected by Subsection **C(4)**, may apply to the Planning Board for a special permit to construct a single-family residence if the lots are on roads which have been constructed as of April 1, 1982, in accordance with Chapter **305**, the Subdivision Rules and Regulations of the Town of Falmouth, and if the lots are resubdivided so that the total area of the commonly held lots, when divided by the number of building permits to be requested, results in an area of land per single-family residence that equals at least 75% of the existing requirements for that zoning district. The additional criteria specified in Subsection **C(3)** shall also be considered. In addition, the Planning Board may set aside one of the created lots as an open space lot as allowed under MGL C. 41, § 81U.
[Amended ATM 4-7-1986, Art. 75]
- (7) Any lot in an RB or AGB Zoning District, shown on a plan or described in a deed duly recorded at the Registry of Deeds before January 1, 1975, with an area of at least 20,000 square feet, shall be eligible for a building permit by right, as long as the lot width is 100 feet or greater, provided that the lot conforms to all other requirements of the Zoning Bylaws.
[Added ATM 4-6-1983, Art. 63]
- (8) Any lot in a GR, RC, RB, RA, AGB or AGA Zoning District not held in common ownership with adjoining land as of 1 January 1994, shown on a plan filed at the Registry of Deeds before April 4, 1988, with an area of at least 45,000 square feet, lot width of at least 150 feet and frontage of at least 100 feet, shall be eligible for a building permit by right, provided that on any such lot otherwise ineligible for a building permit the number of bedrooms shall not exceed one bedroom per 13,500 square feet of lot area, unless additional bedroom unless additional bedrooms are allowed by special permit, in which case the Board of Appeals shall impose conditions to preserve and protect existing and potential sources of drinking water, including required use of a sewage disposal system with enhanced nitrogen removal.
[Added ASTM 4-3-1995, Art. 17]
- D. One dwelling per lot. Not more than one dwelling shall be erected on a single lot except for multifamily use as allowed for within designated zoning districts. An existing, nonconforming use of two or more structures on a single lot, as of 1 January 1981, not previously used for year-round habitation, may not be altered, reconstructed, extended or changed structurally, except by special permit from the Zoning Board of Appeals. Year-round habitation is deemed to be an extension of use.
[Amended ATM 4-7-1982, Art. 47; STM 4-3-2012, Art. 4, approved 5-4-2012]

§ 240-67. Minimum lot dimensions.

A. Schedule of Requirements.

[Amended ATM 4-4-1979, Art. 102; STM 4-9-1980, Art. 24; ATM 4-8-1981, Art. 53; ATM 4-7-1982, Art. 48; ATM 4-4-1984, Art. 54; AFTM 11-7-2011, Art. 3, approved 1-31-2012]

District	Minimum Lot Area (square feet)	Minimum Lot Width (feet)	Minimum Frontage (linear feet)
Single Residence AA	80,000	200	150 ⁴
Single Residence A	45,000 ⁴	150	100
Single Residence B ⁷	40,000 ^{4,c}	125	100 ^a
Single Residence C ⁷	40,000 ^{4,c}	100	100 ^a
General Residence	20,000 ⁴	125 ⁴	100 ^a

District	Minimum Lot Area (square feet)	Minimum Lot Width (feet)	Minimum Frontage (linear feet)
Public Use	45,000 ⁴	150	100
Agricultural AA	80,000	200	150 ⁴
Agricultural A	45,000 ⁴	150	100
Agricultural B	40,000 ^{4,8,d}	125	100 ^{4,a}
Marine	20,000 ⁴	100	100 ^a
Business 1			
Business 2 ²	40,000	200	200
Business 3	Note ¹	Note ¹	Note ¹
Light Industrial A ³	40,000	150	100
Light Industrial B	80,000	200	100
Light Industrial C	40,000	100	100
Water Resource Overlay ^b	80,000	200	150
Coastal Pond Overlay ^b		(Refer to Article XXI)	
Wildlife Corridor Overlay ^b		(Refer to Article XX)	
Accident Prevention Overlay ^b		(Refer to Article XVI)	

NOTES:

¹ Requirements are those of the nearest Single Residence, General Residence or Agricultural District, whichever is closest.

[Amended ATM 4-1-1985, Art. 65]

² No requirement for building on lots owned separate from all abutting property on February 1, 1979.

³ No requirements for building on lots owned separate from all abutting property and zoned Light Industrial A, as of 1 January 1981.

[Added ATM 4-8-1981, Art. 53]

⁴ Corrected Subsection **A** shall not apply to any residential lot shown on a plan endorsed by the Planning Board as of April 2, 1984, if the lot conforms to the zoning requirements in existence on that date. Corrected Subsection **A** also shall not apply for the purpose of special permit applications under § **240-66C(6)**, provided that the provisions of this sentence shall not apply to more than three adjoining lots in common ownership. This protection shall not restrict the Planning Board from considering alternatives to issuance of any special permit under § **240-66C(6)**.

[Amended ATM 4-6-1987, Art. 62]

⁵ Frontage for all lots along Route 151 extending from Route 28A to the Mashpee Town line and along Route 28 from the Bourne Town line to the Mashpee Town line shall be 500 linear feet minimum for all zoning districts. This restriction shall not apply to lots endorsed by the Planning Board as of October 1, 1985.

[Added STM 10-8-1986, Art. 69]

⁶ Corrected Subsection **A** shall not apply to any residential lot shown on a preliminary or definitive plan submitted to the Planning Board between March 1, 1983, to April 2, 1984, and subsequently approved between April 2, 1984, and December 31, 1984.

[Added AFTM 11-17-1992, Art. 4, approved 2-3-1993]

⁷ Corrected Single Residence B and Single Residence C shall not apply to any lot shown on a plan endorsed by the Planning Board prior to April 1, 1993, or to any lot shown on a plan submitted for approval to the Planning Board prior to April 1, 1993, and subsequently endorsed after that date.

NOTES:

[Added ASTM 4-5-1993, Art. 13, approved 7-16-1993]

⁸ Corrected Agricultural B shall not apply to any lot shown on a plan endorsed by the Planning Board prior to April 1, 1993, and subsequently endorsed after that date.

[Added AFTM 11-30-1993, Art. 4, approved 2-25-1994]

EDITOR'S NOTES:

^a [Amended STM 11-1-1988, Art. 61]

^b [Added ATM 4-5-1989, Art. 47]

^c [Amended ASTM 4-5-1993, Art. 13, approved 7-16-1993]

^d [Amended AFTM 11-30-1993, Art. 4, approved 2-25-1994]

- B. No part of any lot may be less wide than 50 feet in any dimension except at the corners. This amendment to Lot Width shall not apply to a lot shown on a plan or described in a deed duly recorded at the Registry of Deeds as of April 1, 1996, which, at the time of the zoning bylaw change, conformed to the then existing requirements for the zoning district in which it is located.

[Added ATM 4-6-1992, Art. 16; amended ASTM 4-1-1996, Art. 9, approved 4-18-1996]

- C. Lots for commercial accommodations.

- (1) Except in Business or Light Industrial Districts, lots for boarding- and lodging houses, hotels, inns and motels shall conform to the following minimum requirements:

[Amended ATM 4-8-1981, Art. 53; STM 11-16-1983, Art. 46]

- (a) For commercial accommodations containing five or fewer guest units, the lot shall contain not less than the minimum area, in square feet, required for a single residence in the district where the building is to be located and shall otherwise conform to the regulations of the zoning district in which it is located.

- (b) For commercial accommodations containing six to 15 guest units, inclusive, the lot shall contain not less than the minimum area, in square feet, required for a single residence in the district where the building is to be located, plus an additional 1/5 of the minimum area required for a single residence in the district for each guest unit over five.

- (c) For commercial accommodations containing more than 15 guest units, the lot must meet the requirements of Subsections **C(1)(a)** and **(b)** above, plus an additional 1/10 of the minimum area required for a single residence in the district of each guest unit over 15.

- (d) For commercial accommodations lawfully in existence and operating as a commercial accommodation as of August 26, 1983, the lot shall contain not less than the minimum area in square feet required for a single-family residence in the district where the building is to be located, plus an additional one-tenth (1/10) of the minimum area required for a single residence in the district for each guest unit over five where the building is to be located, except where Subsection **C(3)** would apply.

- (2) In Business and Light Industrial Districts, the following table of requirements and allowed uses shall apply:

[Amended ATM 4-8-1981, Art. 53; ATM 4-5-1984, Art. 56]

- (a) Industrial A and Industrial B Districts: not allowed.

- (b) Business 1: not allowed.

- (c) Business 2 and Business Redevelopment: allowed. The lot shall contain not less than 10,000 square feet of area plus an additional 1,000 square feet for each guest unit over five. For commercial accommodations in existence and lawfully operating as a commercial accommodation as of January 20, 1984, additional guest units may be added under the provisions of Article **XXVII** provided that the lot contains not less than 1,000 square feet of area for each guest unit, either existing or proposed.
[Amended ATM 4-11-2018, Art. 36, approved 1-2-2018]
- (d) Business 3: allowed. The lot shall contain not less than 15,000 square feet of area plus an additional 1,500 square feet of area for each guest unit over five. For commercial accommodations in existence and lawfully operating as a commercial accommodation as of January 20, 1984, additional guest units may be added under the provisions of Article **XXVII** provided that the lot contains not less than 1,000 square feet of area for each guest unit, either existing or proposed.
- (3) The minimum lot size requirements for a special permit for a boarding- or lodging house may be waived by the Board of Appeals if a structure had been issued a lodging house license for the calendar year 1976 and/or 1977.
- D. The Planning Board may, by special permit, allow the creation of lots with less than the required lot width if topographic or other physical conditions so warrant and if the special permit conditions found in Article **XLII** are satisfied. The Planning Board may not create a lot under this section with less than 80% of the required lot width.
[Added STM 10-2-1990, Art. 9, approved 1-9-1991]

§ 240-68. Setbacks.

- A. Minimum setbacks from the street frontage shall be 25 feet, with the following exceptions:
[Amended ATM 4-4-1979, Art. 102; ATM 4-8-1981, Art. 53; STM 10-26-1982, Art. 61; ATM 4-7-1986, Art. 64; ATM 4-6-1987, Art. 55; STM 11-1-1988, Art. 50]
 - (1) Minimum setbacks (except in Business 1 Districts) for structures, other than listed in Subsection **A(2)**, from Routes 28 and 28A and Sandwich Road from Route 28 to Otis Air Force Base, shall be 35 feet. Minimum setbacks from Thomas Landers Road shall be 50 feet, from Route 28 east to the Hill and Plain line. Minimum setbacks from Route 151 shall be 75 feet, from Route 28A to the Mashpee Town line.
 - (2) Multifamily dwellings, commercial accommodations, if exceeding two and one-half (2 1/2) stories, shall have a minimum setback from the street frontage of 50 feet.
 - (3) Certain building lines adopted by Town Meeting vote and on file with the Town Clerk must also be observed on portions of Main Street, East Main Street, Davis Straits, Elm Arch Way and Robbins Road. (See ATM 1929, Art. 85; STM 1949, Art. 1; STM June 1956, Arts. 15 and 16; ATM 1957, Art. 70.)
 - (4) In Business 1 Districts, no setback from the street frontage is required except as specified in Subsection **A(2)** and **(3)**.
 - (5) For nonresidential uses in Light Industrial Districts, see Subsection **C**.
 - (6) For lots in Business 2, Business 3 and Industrial A Districts where 30% or more of lot area is covered at the time of application by buildings lawfully in existence on April 2, 1979, no setback is required except as specified in Subsection **A(1)**, **(2)** and **(3)**.
 - (7) For structures of less than 3,000 square feet in the Public Use District to be used for municipal purposes no setback is required.

- (8) The Zoning Board of Appeals, as the special permit granting authority, may issue a special permit for an accessory structure in a front yard, but not closer to the street frontage than 50 feet.

[Amended AFTM 11-9-2009, Art. 8, approved 2-5-2010]

- (9) Stonewalls, retaining walls, fences, gates, memorials and paved driveways or other paved areas located in an Historic District created pursuant to c. 645 of the Acts of 1975 as amended and visible in the opinion of the Building Commissioner from a public way: no setback is required.

[Added AFTM 11-15-1999, Art. 4, approved 3-22-2000]

B. Minimum setbacks from side and rear lot lines are required as follows:

[Amended ATM 4-4-1979, Art. 102; ATM 4-8-1981, Art. 53; STM 10-26-1982, Art. 56; STM 11-1-1988, Arts. 52 and 57]

- (1) For residential structures, and appurtenant accessory structures in excess of 100 square feet, except piers, floats, docks and bulkheads the minimum setback in all districts shall be 10 feet. A shed 100 square feet or less shall be at least three feet from the side and rear property lines.

[Amended 11-13-2018 FATM by Art. 13, approved 2-21-2019]

- (2) For multifamily dwellings, commercial accommodations, exceeding two and one-half (2 1/2) stories, the minimum side setback shall be the building height and the minimum rear setback shall be 100 feet.

- (3) For principal structures other than dwellings in Residential, Agricultural, Business 2, Business 3 and Marine Districts the minimum setback shall be 20 feet.

- (4) For structures in Light Industrial Districts, see Subsection C.

- (5) For other structures in Public Use and Business 1 Districts, no requirement.

- (6) A side or rear yard may contain an accessory structure not over one and one-half (1 1/2) stories high if covering not over 30% of its area.

- (7) No building shall be located within 25 feet of the boundary of a district in which its use is prohibited.

- (8) For lots in Business 2, Business 3 and Industrial A Districts where 30% or more of lot area is covered at the time of application by buildings lawfully in existence on April 2, 1979, no side or rear setback is required except as specified in Subsection **B(1), (2) and (7)**.

- (9) Stonewalls, retaining walls, fences, gates, memorials and paved driveways or other paved areas located in an Historic District created pursuant to c. 645 of the Acts of 1975 as amended and visible in the opinion of the Building Commissioner from a public way: no setback is required.

[Added AFTM 11-15-1999, Art. 4, approved 3-22-2000]

C. In Industrial Districts B, the setback of any nonresidential building, fence or enclosure from a street or other lot line shall be not less than 10% of the depth or width of the lot, but in no case closer to the street line than 100 feet or closer to any other lot line than 50 feet. In Industrial District A the setback of any nonresidential building or area used for storage of materials and/or equipment shall be at least 50 feet from a street line, and at least 35 feet from any lot line, except that in no event shall any such structure and/or area of use be within 50 feet of the boundary of a district in which the use is prohibited. The zone of setback, except as provided in **§ 240-109F(1)**, shall be free of parking areas or outdoor storage and shall be grassed or shrubbed, and retain all native trees greater than three inches in diameter at chest height,

providing the thickness of vegetation shall not block the view of oncoming traffic sufficiently to constitute a hazard to vehicles exiting from access driveways. If few trees exist naturally, trees no less than eight feet tall shall be maintained at densities no less than one shrub and one tree for every 400 square feet. In Light Industrial C Districts the minimum front yard setback shall be 35 feet; side and rear yard minimum setbacks shall be 10 feet.

[Amended ATM 4-8-1981, Art. 53; ATM 4-6-1987, Art. 67; AFTM 11-7-2011, Art. 3, approved 1-31-2012]

- D. No principal structure except piers, floats and docks in Marine Districts shall be erected less than 50 feet from the waters of Buzzards Bay, Great Harbor, Vineyard Sound, Nantucket Sound or any tidal ponds, tidal rivers or freshwater ponds and freshwater rivers, except that there is no minimum setback from the waters of Great Harbor in Woods Hole; from the Town Landing at Gosnold Road and Bar Neck Road southeasterly and easterly to the southern property line of the land of Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, (off Cowdry Road in Woods Hole); and the waters of Little Harbor in Woods Hole at land belonging to the United States Government known as the Coast Guard Station at Woods Hole. The waters of Buzzards Bay and tidal ponds and tidal rivers off Buzzards Bay shall be determined by the contour line of four-foot elevation based on the National Geodetic Vertical Datum. The tidal waters of Great Harbor, Vineyard Sound and Nantucket Sound and all tidal ponds and tidal rivers off Vineyard Sound and Nantucket Sound shall be determined by the contour line of three-foot elevation based on the National Geodetic Vertical Datum. The waters of fresh ponds shall be measured from the elevation as follows:

[Added ATM 4-5-1983, Art. 48; amended ATM 4-2-1984, Art. 44; STM 11-1-1988, Art. 48]

1. Flax Pond in Quissett	Elevation 13
2. Miles Pond in Sippewissett	Elevation 10
3. Mares Pond	Elevation 15
4. Spectacle Pond (near Mares Pond)	Elevation 15
5. Deer Pond	Elevation 19
6. Jenkins Pond	Elevation 21
7. Round Pond	Elevation 23
8. Coonamessett Pond	Elevation 35
9. Crooked Pond	Elevation 32
10. Shallow Pond	Elevation 29
11. Deep Pond and Ashumet Pond	Elevation 37
12. Spectacle Pond (near Sam Turner Road)	Elevation 33
13. Grassy Pond	Elevation 41
14. Fresh Pond	Elevation 21
15. Flax Pond (near John Parker Road)	Elevation 14
16. Unnamed pond in the Coonamessett Valley below Sandwich Road	Elevation 16
17. Wings Pond	Elevation 11
18. Crocker Pond	Elevation 12
19. Trout Pond (near Chester Street formerly called Flax Pond)	Elevation 8
20. Cedar Lake	Elevation 11
21. Siders Pond	Elevation 4
22. Shivericks Pond	Elevation 4
23. Nyes Pond	Elevation 7
24. Morse Pond	Elevation 7

25. Jones Pond	Elevation 8
26. Round Pond (near Coonamesett Pond)	Elevation 37
27. Weeks Pond	Elevation 7

The waters of any other fresh pond shall be determined by the contour of the highest observed elevation, established by measuring the existing elevation and adjusting that elevation by using the methods specified in the U.S.G.S. Open File Report 80-1008, as if the waters of the pond were the groundwater.

- (1) No building permit shall be issued for any principal structure erected on a lot fronting on fresh or tidal waters described above until a plan certified by a registered land surveyor is furnished to the Building Commissioner. Said plan shall clearly delineate the distance from the proposed structure to the water body.
- (2) Any lot shown on a plan or described in a deed duly recorded at the Registry of Deeds that has less than 125 feet depth from the measured water mark to the front, side or rear lot line, whichever is greater, shall be eligible to apply to the Board of Appeals for a special permit to construct a single-family residence if, when all setbacks are taken into consideration, including the fifty-foot setback required herein, the minimum average width of the remaining building envelope is less than 60 feet. In no case shall the Board of Appeals grant a special permit to construct a single-family residence less than 30 feet from the measured water's edge, as described above.

§ 240-69. Maximum lot coverage.

[Amended ATM 4-4-1979, Art. 102]

- A. Lot coverage shall not exceed the following, except as provided in Subsection C:
[Amended ATM 4-4-1979, Art. 102; STM 11-15-1983, Art. 48; ATM 4-2-1984, Art. 48; ATM 4-4-1985, Art. 57; ATM 4-2-2002, Art. 17, approved 6-11-2002; AFTM 11-13-2012, Art. 4, approved 3-25-2013; ATM 4-3-2017, Art. 8, approved 6-14-2017]

Districts	Maximum Percent of Lot Coverage	
	By Structures	Structures/Paving
Residence AA, A, Agricultural AA, A	20	40
General Residence	20	50
Residence B, C, Agricultural B	20	40
Industrial B	40	70
Public Use	40 ²	70
Marine	40 ²	70
Business 2, Industrial A	40 ^{1,2}	70
Business 3	35 ^{1,2}	65
Business 1	70	90
Business Redevelopment	20	60

NOTES:

¹ Except not more than 12% for banks, fast-food establishments or motor fuel service stations; 18% for other restaurants.

NOTES:

² For lots where 30% or more of lot area is covered by buildings lawfully in existence on April 2, 1979, additions may cover up to 40% of remaining unbuilt-on area.

³ Excluded from lot coverage are materials considered pervious by the Building Commissioner, including but not limited to, pervious concrete, pavers, and similar material.

- B. In Light Industrial District B the portion of any lot which may be covered by any nonresidential building shall be as follows:
- (1) Lots of area up to eight acres, 25%.
 - (2) Lots of area from eight to 15 acres, 30%.
 - (3) Lots of area from 15 to 25 acres, 40%.
 - (4) Lots of area over 25 acres, 50%.
- C. In Business 2, 3, Industrial A, B and Public Use Districts, the difference between maximum percentage of lot coverage by structures, paving and parking and gross total lot area shall not be used for vehicular parking or storage of any kind and shall be maintained with landscaping, including shade and other trees, in plots of at least four feet in width. Trees and soil plots shall be located so as to provide visual relief and sun and wind interruption within the site, and to assure safe pattern of internal circulation where appropriate. Landscaping and plantings shall conform in all respects to § **240-114** through **240-120** of this chapter.
[Added ATM 4-4-1985, Art. 57]
- D. For uses other than a single-family detached house or a semidetached house or a two-family dwelling, a percentage coverage by structures and paving higher than provided in Subsection **A** may be allowed only on special permit from the Planning Board, upon its receipt of calculations prepared by a professional engineer indicating that stormwater runoff from the site will not be increased following development by more than 10% in a ten-year storm, that the soil loss rate from the site will not be increased above the existing rate by more than 10% following development, that average summer daily trip generation will not exceed four trips per linear foot of lot frontage, and upon the Planning Board's determination that erosion control methods to be employed during construction will be adequate to prevent excessive soil loss and that all landscaping and screening requirements will be met.
[Amended STM 12-13-1979, Art. 52]
- E. In Residence B, C and Agricultural B Zoning Districts maximum percent lot coverage by structures of up to 25% may be allowed by special permit by the Board of Appeals. In issuing the special permit the Board of Appeals shall take into consideration the size and height of the structure in relation to the average size and height of structures in the neighborhood, the effects of shadow on adjacent properties, the impact on views and vistas from public ways, and the effect of nitrogen on coastal embayments.
[Added ASTM 4-2-2002, Art. 17, approved 6-11-2002; amended AFTM 11-9-2009, Art. 9, approved 2-5-2010]
- F. In Light Industrial C Districts total disturbance shall not exceed 70% of the lot area.
[Added AFTM 11-7-2011, Art. 3, approved 1-31-2012]

§ 240-70. Maximum building height.

[Amended ATM 4-8-1981, Art. 53; STM 10-26-1982, Art. 57; ATM 4-9-2018, Art. 33, approved 7-2-2018]

The basic maximum building height for principal structures is 2 1/2 stories, not to exceed 35 feet,

and for accessory, not to exceed 22 feet with the following exceptions:

- A. For agricultural uses only, structures within Agricultural Districts may have a maximum height of 50 feet as measured from the base of the structure to the highest point.
[Amended STM 11-15-1983, Art. 47; ATM 4-2-1984, Art. 50]
- B. In Public Use Districts, the maximum building height for permitted community service uses is three stories, not to exceed 50 feet, except that the municipal purposes found in § **240-30B** shall not be subject to the height provisions of this bylaw.
[Amended ATM 4-2-1984, Art. 50; AFTM 11-13-2001, Art. 7, approved 3-15-2002]
- C. In Light Industrial B and C Use Districts, the maximum building height shall be 40 feet, and the maximum number of stories shall be three.
[Added ATM 4-6-1992, Art. 17; amended AFTM 11-7-2011, Art. 3, approved 1-31-2012]
- D. By special permit from the Zoning Board of Appeals, on lots two acres or more, accessory structures may have a maximum height of 25 feet. In granting such special permit, the Zoning Board of Appeals shall require that the lot shall not be divided below the two-acre minimum, that no accessory apartment shall be allowed and that the suitability of the site is sufficient to allow such an increase in height so that there will not be any adverse impact on neighborhood visual character or obstructions of views and vistas.
[Added ASTM 4-6-1992, Art. 18]

Article XV. Water Resource Protection Districts

[Amended STM 12-13-1979, Art. 53; ATM 4-7-1981, Art. 43; STM 11-15-1983, Art. 49; ATM 4-2-1984, Art. 49; STM 10-8-1986, Art. 67; ATM 4-5-1988, Art. 52; STM 10-25-1989, Art. 70; AFTM 11-30-1993, Art. 5, approved 2-25-1994]

§ 240-71. Purpose.

The purpose of this Water Resource Protection District is:

- A. To promote the health, safety and general welfare of the community by ensuring an adequate quality and quantity of drinking water;
- B. To preserve and protect existing and potential sources of drinking water supplies;
- C. To conserve the natural resources of the Town; and
- D. To prevent temporary and permanent contamination of the environment.

§ 240-72. Definitions.

For the purposes of this Article, the following words and phrases shall have the following meanings:

AQUIFER

Geologic formation composed of rock, sand or gravel containing sufficient saturated material in order to yield potable groundwater to public or private wells.

IMPERVIOUS SURFACE

Material or structure on, above or below the ground that prevents precipitation or surface water from penetrating directly into the soil.

MINING

The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores or bedrock.

RECHARGE AREAS

Areas that collect precipitation or surface water and carry it to aquifers, designated as Zones I, II or III, as defined in 310 CMR 22.00.

TOXIC OR HAZARDOUS MATERIAL

Any substance or combination of substances, not including any liquid petroleum product, posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or combination were discharged to land or water of the Town of Falmouth. "Toxic or hazardous materials" include all substances defined as "toxic or hazardous" under Massachusetts General Laws, hereinafter referred to as MGL c. 21C and 21E and 310 CMR 30.00.

WATER RESOURCE PROTECTION DISTRICT

The zoning district defined to overlay other zoning districts in the Town of Falmouth. The Water Resource Protection District may include specifically designated recharge areas.

§ 240-72.1. Establishment and delineation of Water Resource Protection District.

- A. For the purposes of this Article, there is hereby established in the Town of Falmouth the Water Resource Protection District which is an overlay district superimposed on the zoning districts. This overlay district shall apply to all new construction, reconstruction or expansion of existing buildings and new or expanded uses.
- B. Applicable activities or uses which fall within the Water Resource Protection District must comply with the requirements of this district as well as with the underlying zoning.
- C. Uses that are prohibited in the underlying zoning districts shall not be permitted in the Water Resource Protection District.
- D. For the purposes of this district, there are hereby delineated within the Town certain water resource protection areas consisting of aquifers or recharge areas which are delineated on a map. This map is at a scale of one inch to 1,500 feet and is entitled "Water Resource Protection District, Town of Falmouth," dated March 29, 2011. This map, as it may be amended from time to time, is hereby made a part of the Town Zoning Bylaw and is on file in the office of the Town Clerk.
[Amended ASTM 4-5-1999, Art. 14, approved 7-23-1999; STM 4-5-2011, Art. 3, approved 6-29-2011]

§ 240-72.2. Boundary disputes.

If the location of the district boundary, as delineated on the Water Resource Protection District Map, in relation to a particular parcel is in doubt or dispute, the burden of proof shall be on the property owner(s) of the land in question to show where the bounds should properly be located. At the request of the owner(s), the Town may engage a professional engineer, hydrologist, geologist or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land and may charge the owner(s) for all or part of the cost of the investigation.

§ 240-72.3. Use regulation.

In the Water Resource Protection District the following regulations shall apply:

- A. Permitted uses. The following uses may be permitted within the Water Resource Protection District, subject to Subsection **B**, Prohibited uses, and Subsection **C**, Special permit uses, and provided that all necessary permits, orders or approvals required by local, state or federal law are also obtained:
- (1) Conservation of soil, water, plants and wildlife;
 - (2) Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted;
 - (3) Foot, bicycle and/or horse paths and bridges;
 - (4) Normal operation and maintenance of existing water bodies and dams, splash boards and other water control, supply and conservation devices;
 - (5) Development permitted in the underlying district, subject to Subsection **B**, Prohibited uses, and Subsection **C**, Uses and activities requiring a special permit;
 - (6) Farming, gardening, nursery, conservation, forestry, harvesting and grazing subject to Subsection **B**, Prohibited uses; and
 - (7) Construction, maintenance, repair and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts and tunnels. Underground storage tanks related to these activities are not categorically permitted.
- B. Prohibited uses. The following uses are prohibited:
- (1) Landfills and open dumps as defined in 310 CMR 19.006;
 - (2) Landfilling of sludge or septage as defined in 310 CMR 32.05;
 - (3) Storage of sludge or septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
 - (4) Storage or disposal of de-icing chemicals;
 - (5) Storage of animal manure unless covered or contained;
 - (6) Facilities that generate, treat, store or dispose of hazardous waste subject to MGL c. 21C except the following licensed activities:
 - (a) Very small quantity generators as defined under 310 CMR 30.00;
 - (b) Household hazardous waste collection centers and events under 310 CMR 30.390;
 - (c) Waste oil retention facilities required by MGL c. 21C § 52A; and
 - (d) Water remediation treatment works approved under 314 CMR 5.00;
 - (7) Automobile recycling, automobile graveyards and junkyards as defined in MGL c. 140B, § 1;
 - (8) Treatment works that are subject to 314 CMR 5.00 including privately owned sewage treatment facilities, except the following:
 - (a) The replacement or repair of an existing treatment works that will not result in a

- design capacity greater than the design capacity of the existing treatment works;
- (b) The replacement of existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);
 - (c) Treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater;
- (9) Auto service or repair, trucking and bus terminals, gas stations, commercial laundry, dry cleaning establishments, car washes, airports, commercial accommodations, industrial and commercial uses which discharge process wastewater on-site; parking lots set apart primarily to accommodate off-site activities.
- (10) Storage of liquid petroleum products except the following:
- (a) Normal household use, outdoor maintenance and heating of a structure;
 - (b) Waste oil retention facilities required by statute, rule or regulation;
 - (c) Emergency generators required by statute, rule or regulation;
 - (d) Treatment works approved under 314 CMR 5.00 for treatment of ground- or surface waters, provided that storage, listed in items Subsection **B(10)(a)** through **(d)** above is in freestanding containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity, plus 10%.
- (11) Stockpiling and disposal of snow and ice containing de-icing chemicals if brought in from outside the district.
- C. Uses and activities requiring a special permit. The following uses and activities may be permitted only upon the issuance of a special permit by the Board of Appeals under such conditions as they may require:
- (1) Enlargement or alteration of existing uses that do not conform to the Water Resource Protection District; provided, however, that such enlargement or alteration shall not be permitted for any such existing use listed in Subsection **B**, Prohibited uses.
 - (2) The application of pesticides, including herbicides, insecticides, fungicides and rodenticides, for nondomestic or nonagricultural uses in accordance with state and federal standards. The special permit shall be granted if such standards are met. If applicable, the applicant should provide documentation of compliance with a yearly operating plan (YOP) for vegetation management operations under 333 CMR 11.00 or a Department of Food and Agriculture approved Pesticide Management Plan or Integrated Pest Management (IPM) program under 333 CMR 12.00.
 - (3) The application of fertilizers for nondomestic or nonagricultural uses. Such applications shall be made in a manner so as to minimize adverse impacts on groundwater due to nutrient transport, deposition and sedimentation.
 - (4) Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Subsection **B**).
 - (5) Storage of liquid hazardous materials as defined in MGL c. 21E, in a freestanding container within a building or aboveground, with secondary containment adequate to

contain a spill the size of the container's total storage capacity plus 10%.

- (6) Storage of commercial fertilizers, pesticides, herbicides and soil conditioners as defined in MGL c. 128, § 64, such storage must be within a structure designated to prevent the generation and escape of contaminated runoff or leachate.
- (7) The construction of dams or other water control devices, ponds, or other changes in water bodies or courses created for swimming, fishing or other recreational uses, agricultural uses or drainage improvements. Such activities shall not adversely affect water quality or quantity.
- (8) Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, recharge shall be by stormwater infiltration basins or similar system covered with natural vegetation. Dry wells shall be used only where other methods are unfeasible. For all nonresidential uses, all such basins and wells shall have oil, grease and sediment traps to remove contamination. Any and all recharge areas shall be permanently maintained according to best management practices by the owner.

§ 240-72.4. Procedures for issuance of special permit.

- A. The SPGA under this Article shall be the Board of Appeals. Such special permit shall be granted if the Board of Appeals determines that the intent of this bylaw as well as its specific criteria are met. The Board of Appeals shall not grant a special permit under this section unless the petitioner's application materials include, in its opinion, sufficiently detailed, definite and credible information to support positive findings in relation to the standards given in this section. The Board of Appeals shall document the basis for any departures from the recommendations of the other Town boards or agencies in its decision.
- B. Upon receipt of the special permit application, the Board of Appeals shall transmit one copy to the Board of Health, the Conservation Commission, the Public Works/Engineering Departments, the Planning Board and the Town Administrator for their written recommendations. Failure to respond in writing within 35 days of receipt by the Board shall indicate approval or no desire to comment by said agency. The necessary number of copies of the application shall be furnished by the applicant.
- C. The Board of Appeals may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in this section of this Article and any regulations or guidelines adopted by the Board of Appeals. The proposed use must:
 - (1) In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Resource Protection District; and
 - (2) Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water-related natural characteristics of the site to be developed.
 - (3) Not exceed a maximum loading standard for nitrate-nitrogen impact on groundwater of five parts per million, unless a cumulative impact analysis indicates a more stringent loading standard is necessary.
- D. The Board of Appeals may adopt regulations to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the Planning Board.
- E. The applicant shall file three copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the Board of Appeals and be stamped by a

professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:

- (1) A complete list of chemicals, pesticides, herbicides, fertilizers, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.
 - (2) For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Board of Appeals for use by the Hazardous Materials Coordinator, the Fire Chief and the Board of Health. The plan shall include:
 - (a) Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and cleanup procedures.
 - (b) Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces.
 - (c) Evidence of compliance with the regulations of the Massachusetts Hazardous Waste Management Act, 310 CMR 30.00, including obtaining an Environmental Protection Agency (EPA) identification number from the Massachusetts Department of Environmental Protection.
 - (3) Proposed down-gradient location(s) and specifications for groundwater monitoring well(s) should the Board of Appeals deem the activity a potential groundwater threat.
 - (4) Proposed stormwater drainage system.
 - (5) Provisions to control soil erosion and sedimentation.
 - (6) Names, addresses and phone numbers of key contact persons if not provided elsewhere.
- F. The Board of Appeals shall hold a hearing in conformity with the provision of MGL c. 40A, § 9. Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties of interest" as defined in MGL c. 40A, § 11. The decision of the Board of Appeals and any extension, modification or renewal thereof shall be filed with the Board of Appeals and Town Clerk within 90 days following the public hearing. Failure of the Board of Appeals to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until the special permit is recorded as required by said MGL c. 40A, § 11.
- G. Written notice of any violations of this section shall be given by the Building Commissioner to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Board of Health, the Conservation Commission, the Public Works/Engineering Departments, the Building Commissioner, the Water Department and the Town Administrator. The cost of containment, cleanup or other action of compliance shall be borne by the owner and operator of the premises. For situations that require remedial action to prevent adverse impact to the water resources within the Water Resource Protection District, the Building Commissioner or any agent may order the owner or operator of the premises to remedy the violation. If said owner and/or operator does not comply with said order, the Town of Falmouth, the Board of Health, the Building Commissioner or any of their agents, if authorized to enter upon such premises under the terms of the special permit

or otherwise, may act to remedy the violation. The remediation cost shall be the responsibility of the owner and operator of the premises.

§ 240-72.5. Density limitations.

The following density limitations shall apply within the Water Resource Protection District:

- A. Nonresidential uses shall not exceed 7.5 gallons sewage per day per 1,000 square feet of lot area. Estimated sewage flows shall be based on Title V of the State Environmental Code, 310 CMR 15.00. Maximum lot coverage by impervious surfaces shall not exceed 40%.
- B. Residential uses shall have the following density limitations:
 - (1) Minimum lot size: 80,000 square feet.
 - (2) Minimum lot width: 200 feet.
 - (3) Minimum lot frontage: 150 feet.
 - (4) Maximum lot coverage by impervious surfaces: 20%.

§ 240-72.6. Severability.

A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.

Article XVI. Accident Prevention Zones

[Amended ATM 4-7-1981, Art. 46; ATM 4-8-1982, Art. 63]

§ 240-73. Establishment of zones.

Accident Prevention Zones I and II are hereby established as shown on the plan entitled "Dept. of the Air Force, Director of Engineering and Services-DCS P & R, Washington, D.C.; ANGSC Master Plan Air Installation Compatible Use Zone (AICUZ), Otis Air Force Base, Falmouth, Massachusetts, scale one inch equals 2,000 feet; date 26 October, 1979."

§ 240-74. Uses prohibited.

[Amended ATM 4-3-1989, Art. 48]

Anything to the contrary in this chapter notwithstanding, except as provided in § **240-75**, no new school, hospital, theater, public housing, multifamily dwelling, duplex, planned residential development, or place of assembly shall be erected or permitted within the Accident Prevention Zone.

§ 240-75. Conversion of existing structures.

Conversions of existing structures for dwelling purposes shall be allowed in the Accident Prevention Zone only upon special permit from the Board of Appeals. The Board of Appeals shall determine

that the proposed conversion will not increase public exposure to aircraft noise nor to aircraft accident potential over that due to the existing use.

§ 240-76. Height limitation.

Anything in this chapter to the contrary notwithstanding, no building or structure, or part thereof or accessory thereto, shall be constructed, erected or maintained which exceeds 35 feet.

Article XVII. Wetlands Regulations

§ 240-77. Purpose.

The purpose of this Article is to provide for the reasonable protection and conservation of certain irreplaceable wetlands, their resources and amenities, for the benefit and welfare of the present or future inhabitants of the Town.

§ 240-78. Applicability.

Any person wishing to perform, or cause to be performed, any of the following acts or operations shall first obtain a special permit from the Board of Selectmen:

- A. Obstructing, filling, dredging, excavating or changing the course of any stream or tidal water.
- B. Filling, excavating, diking, bulkheading or riprapping within any part of any swamp marsh or tidal marsh, or in or along the shore of any pond, bay, harbor or tidal river, so as to alter the shoreline of said swamp, marsh or body of water, or separate any section of said swamp, marsh or body of water from the main part.

§ 240-79. Decision.

[Amended STM 10-27-1982, Art. 65; ATM 4-5-1983, Art. 43]

Following the public hearing and with due regard to the effect on the immediate area and the general welfare of the Town, the Board of Selectmen shall grant or deny a special permit for any of the foregoing acts or operations. In granting a permit the Board may impose reasonable restrictions and time limitations on the work to be done. In doing so, it shall be guided by what in its judgment is desirable to protect and conserve the shellfish and other aquatic resources of the Town. The Board of Selectmen shall require that the applicant post a cash deposit or surety bond, in form acceptable to the Town Treasurer, in an amount determined by the Board to be sufficient to ensure satisfactory compliance with the permit and any specific restrictions and limitations thereof, or to restore any area of unfinished work to its original condition. No special permit shall be issued in the area of critical environmental concern (ACEC) unless all available means of mitigating or reducing environmental damage have been implemented and any remaining environmental damage is minor or insignificant enough to not irreparably affect the ACEC or its resources.

Article XVIII. Floodplain Zone

§ 240-80. Establishment; map.

[Amended STM 4-9-1980, Art. 29; AFTM 11-17-1992, Art. 5, approved 2-3-1993]

The Town of Falmouth, recognizing the dangers inherent upon coastal flooding at times of hurricanes or severe storms and as a means of protecting its citizens and their property, hereby establishes a series of Floodplain Overlay Districts and zoning regulations for construction of structures and for the use of the land within these districts. Such districts are defined as shown on the Flood Insurance Rate Map, panels 1, 2, 4, 8, 12 and 13 dated July 15, 1992, and panels 7, 9, 10 and 11 dated May 15, 1986, as published by the Federal Emergency Management Agency and as adopted by Town Meeting.

§ 240-81. Base flood elevation levels.

[Amended ATM 4-6-1987, Art. 57]

The coastal area of the Town shall have base flood elevation levels established according to the Flood Insurance Rate Maps and Flood Insurance Study for the Town of Falmouth as adopted by Town Meeting.

§ 240-82. Applicability.

[Amended ASTM 4-6-1992, Art. 11; Art. 20, ASTM 4-3-1995; Art. 10]

This Article shall apply to the following activities:

- A. New construction of residential or nonresidential structures.
- B. Substantial improvement (as defined) of a structure which includes in Velocity (V) Zones any addition(s), improvement(s), alteration(s) or combinations thereof to a structure that would add more than 200 square feet of gross floor area.

[Amended AFTM 11-13-2001, Art. 6, approved 3-15-2002]

- C. The addition to existing structures of increased water, electric or gas service, toilet facilities or sewage systems.
- D. Alteration of the land form (as defined).
- E. Any structure which has sustained substantial damage, as defined.

§ 240-83. Requirements.

[Amended ASTM 4-5-1983, Art. 49; ASTM 4-6-1987, Art. 67; ASTM 4-3-1995, Art. 10]

All building permits granted for activities listed under § **240-82** shall be subject to the following provisions:

- A. Any new construction or substantial improvement to be undertaken within the Floodplain District shall be in accordance with the Massachusetts Building Code, or Town bylaws if more restrictive.
- B. The lowest floor of any new and substantially improved residential structures shall be elevated to or above the base flood elevation level.
- C. In any new residential structure, there shall be no basement, and upon the making of a substantial improvement, no new basement shall be installed.
- D. The lowest floor of any new and substantially improved nonresidential structures shall be elevated to or above the base flood elevation level or be floodproofed (as defined) to this level.

- E. All new and replacement utility and water facilities shall be located and constructed to minimize or eliminate flood damage.
- F. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters. On-site waste disposal systems are to be located to avoid impairment to them or contamination from them during flooding.^[1]
 - [1] *Editor's Note: Former Subsection G, which dealt with special permits, as amended, which immediately followed this subsection, was moved pursuant to ASTM, 4-3-1995, Art. 10. See now § 240-85AA. Said Article also provided for the redesignation of former Subsections H and I to G and H, respectively.*
- G. Certification by a professional engineer or architect for all floodproofing measures shall be required.
- H. Storage of fuel oil, toxic or hazardous materials within the base floodplain shall be floodproofed.

§ 240-84. Additional requirements in V Velocity Zone.

If proposed construction or alteration of the land form is located within a V Zone (as defined), all floodplain permits granted under § **240-82** above shall be subject to the following additional requirements:

- A. All new construction within the V Zones (as defined) shall be located landward of the reach of mean high tide.
- B. All new construction and substantial improvements within the V Zones shall be elevated on adequately anchored pilings or columns and securely anchored to piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. A registered professional engineer or architect shall certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.
- C. All new construction and substantial improvements within the V Zones shall have the space below the lowest floor free of obstructions or be constructed with breakaway walls (as defined) intended to collapse under stress without jeopardizing the structural support of the structure so that the impact on the structure by abnormally high tides or wind-driven water is minimized. Such temporarily enclosed space shall not be used for human habitation.
- D. The use of fill for structural support of buildings within the V Zones is prohibited.
- E. Man-made alteration of sand dunes within the V Zones is prohibited.

§ 240-85. Special permits.

- A. The Board of Appeals may grant a special permit in the case of:
 - (1) Nonresidential structures such as boathouses, boatyards or structures designed for education and research, the nature of which requires their location within the Floodplain District.
 - (2) Restoration and reconstruction of structures listed in the National Register of Historic Places or the official State Inventory of Historic Places.

- AA. Approval for any alteration of the land form (as defined) shall be obtained from the Board of Appeals by special permit. No alteration of the land form shall be permitted where there may be the liability of altering the drainage or runoff to the detriment of other landholders or the Town. Before granting a special permit for the alteration of the land form, the Board of Appeals shall duly consider any recommendations by the Conservation Commission and the Planning Board.

[Amended ATM 4-5-1983, Art. 49; ASTM 4-3-1995, Art. 10^[1]]

[1] *Editor's Note: This Article provided for the renumbering of this subsection from its former designation as § 240-83G.*

- B. Special permits shall only be issued upon a determination by the Board of Appeals that:

- (1) Failure to grant the special permit would result in hardship to the applicant;
- (2) The granting of the special permit will not result in increased flood heights, additional threats to public safety, extraordinary public expense or conflict with existing bylaws; and
- (3) The relief granted is the minimum necessary considering the flood hazard.
- (4) No special permit shall be issued in the area of critical environmental concern (ACEC) unless all available means of mitigating or reducing environmental damage have been implemented and any remaining environmental damage is minor or insignificant enough to not irreparably affect the ACEC or its resources.

[Added STM 10-27-1982, Art. 65; amended ATM 4-5-1983, Art. 43]

- C. Following the granting of such special permit, the Board of Appeals shall notify the applicant in writing that the issuance of a special permit to construct a structure below the base flood level will result in:

- (1) Increased premium rates for flood insurance; and
- (2) Increased risks to life and property.

- D. The Board of Appeals shall maintain a record of special permits including the justification for their issuance.

§ 240-86. Administration.

The Building Inspector shall administer this Article as follows:

- A. Review proposed construction and alteration of the land form within Floodplain Districts to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, or Town bylaw.
- B. Obtain and maintain records of the elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures. In addition, maintain records as to whether or not such structures contain a basement.
- C. If a structure has been floodproofed, obtain and maintain records of the elevation (in relation to mean sea level) of the lowest floor and the elevation to which the structure was floodproofed. In addition, maintain records of floodproofing certifications which have been prepared by registered professional engineers and architects in relation to the adequacy of floodproofing methods.
- D. A determination of substantial improvement (as defined) shall be made using the official records of the Tax Assessor. Any new or revised appraisal submitted for the purpose of

determining substantial improvement shall be submitted by the Building Commissioner to the Tax Assessor.

[Amended ATM 4-6-1987, Art. 57]

Article XIX. Areas of Critical Environmental Concern (ACEC)

[Added ATM 4-5-1983, Art. 62]

§ 240-87. Purpose.

The Town of Falmouth, recognizing the need to affirm and strengthen the intent of state legislation establishing areas of critical environmental concern, namely to protect environmental values significant to flood control, the prevention of storm damage, the protection of waters containing shellfish and fisheries and other public interests protected by the Wetlands Protection Act (MGL C. 131, §§ 40 and 40A) and Chapter **235**, the Town's Wetlands Protection Bylaw, hereby adopts the following regulations.

§ 240-88. Geographical applicability.

[Amended ATM 4-4-1985, Art. 74]

This Article will apply to any area of critical environmental concern (ACEC) within the Town of Falmouth and a buffer zone extending 50 feet landward from the edge of the ACEC. For those lots or land parcels totally encompassed by the ACEC, this Article's applicability will be limited to 100 feet landward of the edge of wetlands, as defined by MGL C. 131, §§ 40 and 40A.

§ 240-89. Regulation of construction.

Within the above-described area, there will be no construction of structures other than accessory buildings as defined. This Article shall not apply to the issuance of building permits for principal structures on lots shown on a plan endorsed by the Planning Board on or before April 4, 1983.

§ 240-90. Alteration of vegetation and wildlife habitats.

Within the area described in § **240-88**, there will be no clear cutting of existing vegetation or alteration of wildlife habitats, except to provide access to permitted structures. However, this section shall not apply in cases where the Conservation Commission determines that its application would adversely affect the purposes of MGL c. 131, § 40, or Chapter **235**, the Town's Wetlands Protection Bylaw.

Article XX. Wildlife Corridor

[Added ATM 4-5-1988, Art. 43]

§ 240-91. Purpose.

Given that an enumerated purpose of zoning is the conservation of natural resources and that wildlife is a valued natural resource in Falmouth and finding that the Commonwealth of

Massachusetts has established the importance of protecting wildlife through numerous laws, and finding that Falmouth has a significant stock of wildlife which moves through a large, defined area of Town, and further finding that development under zoning can be designed to coexist with the wildlife and important habitat areas, the purpose of this Article is to establish and protect permanent and contiguous corridors and special areas for the feeding, breeding and normal home range movement of wildlife through the defined habitat areas.

§ 240-92. Applicability.

All uses of land within the Wildlife Overlay District as shown on the Official Zoning Map shall be subject to the requirements of these sections. This includes:

- A. All subdivisions and divisions of land;
- B. All special permits;
- C. All site plan reviews;
- D. As-of-right construction if it involves an area of disturbance greater than one-fourth (1/4) acre or movement of material equaling more than 2,000 cubic yards.

§ 240-93. Procedure.

- A. Upon submittal to the normal reviewing agency of plans for development, all plans subject to this section shall be referred to the Natural Resources Department.
- B. Within 35 days of such referral, the Natural Resources Department shall file a recommendation with the reviewing agency. This time may be extended at the request of the applicant. These recommendations shall be considered prior to the final decision of the agency, and all restrictions to the property added by the reviewing agency as a result shall be shown on the final approved plan.
[Amended AFTM 11-17-1992, Art. 6, approved 2-3-1993]
- C. All areas on the plan set aside for protection of wildlife habitat shall be permanently conveyed in accordance with § **240-130**, Ownership of open spaces, or shall be subject to a permanent conservation easement, and/or restriction.
- D. No easement or restriction imposed by this section shall:
[Added AFTM 11-18-1996, Art. 4, approved 4-30-1997]
 - (1) Permit public access on private property.
 - (2) Be used to control density of development.
 - (3) Cause any loss of lot coverage. Lot coverage shall be computed on the total area of the property
- E. The Planning Board may waive subdivision rules pertaining to maximum dead-end road length, road width, curb-cuts and similar provisions to the extent necessary to permit the full use of any property.
[Added AFTM 11-18-1996, Art. 4, approved 4-30-1997]

§ 240-94. Standards.

A. For those sites within Area 1, Deer Migration Areas, the following standards shall apply:

- (1) Subdivisions which total more than five acres in the AGA, AGB, RA, PU and RB Zones and more than 20 acres in the AGAA and RAA Zones shall submit to the Planning Board a preliminary cluster subdivision plan. The Planning Board shall encourage the submittal of a cluster-type definitive subdivision in accordance with Article **XXV** of this chapter if it facilitates the purpose of this Article.
[Amended AFTM 11-17-1992, Art. 6, approved 2-3-1992]
- (2) The applicant shall prepare a corridor plan. The proposed corridor shall be contiguous with any existing or potential corridors on abutting parcels.
[Amended AFTM 11-17-1992, Art. 6, approved 2-3-1992; AFTM 11-18-1996, Art. 4, approved 4-30-1997]
 - (a) The applicants proposed corridor shall be subject to the approval of the reviewing agency under criteria A(2)(a)[1] and A(2)(a)[2] listed below. If more than one corridor is proposed the reviewing agency may allow the applicant to choose either or both proposed corridors.
 - [1] Actual use for: migration, browsing or bedding by white tailed deer; shelter or bedding by fox, coyote or other large or medium size mammals which typically do not thrive in proximity to human habitation; nesting by quail, grouse, pheasants or other ground nesting birds, which typically do not thrive in proximity to human habitation; egg deposition and/or migration of reptiles and amphibians.
 - [2] The presence of any rare/threatened or endangered species as listed by the U.S. or Massachusetts Division of Fish and Wildlife.
 - (b) On any parcel on which there is inconclusive evidence of wildlife use, a corridor shall be established that is no wider than necessary to permit migration of white tailed deer, to maintain contiguity of such corridors within the overlay district. No corridor under this section shall exceed 300 feet in width. Within this constraint, no corridor shall be greater in area than is equivalent to the actual area of observed wildlife use of the parcel divided by the total area of the parcel.
 - (c) Any covenant or restriction under this section shall be coordinated with any restriction of record by the State Wetlands Act, Town Wetlands bylaw, State Natural Heritage Program or similar laws.
- (3) Fencing or any structural barrier to wildlife movement within corridors shall be prohibited.
- (4) The applicant shall ensure drainage from roadways be diverted away from depressed areas that may be used as shelter for wildlife.
- (5) Natural, indigenous vegetation shall be encouraged or enhanced by the project. Disturbed areas shall be revegetated as rapidly as possible or within a time required by the reviewing agency.
- (6) Dramatic changes in topography shall be discouraged and the footprint of disturbed areas shall be limited.
- (7) Speed limits shall be posted on all roads in the development to lessen the probability of wildlife vs. vehicle accidents.
[Amended AFTM 11-17-1992, Art. 6, approved 2-3-1993]
- (8) Natural indigenous vegetation shall be reestablished and maintained or enhanced by the project. Areas disturbed during construction shall be revegetated as rapidly as possible

after construction is completed or within such further time as permitted by the reviewing agency.

[Added AFTM 11-18-1996, Art. 4, approved 4-30-1997^[1]]

[1] *Editor's Note: This article also provided for the repeal of former Subsection B, regarding sites within Area 2, Dispersal Areas.*

§ 240-95. Annual review.

Annual reports from the Natural Resources Department shall be filed with the reviewing agency and the owner or owners of the subject property. These reports shall reevaluate the corridors and open space and make recommendations for any adjustments in vegetative plantings.

§ 240-96. Reduction in lot size.

[Amended AFTM 11-17-1992, Art. 6, approved 2-3-1993]

Subdivisions of land as specified in § **240-94** may vary lot size by special permit from the Planning Board from that required by the applicable zoning district by up to 25% less than that required by § **240-67A**, dimensional requirements, so long as the total number of lots is no more than the zoning district would allow under a conventional grid subdivision, and upon a finding by the Planning Board that this special permit is necessary to effect the purpose of this Article.

Article XXI. Coastal Pond Overlay District

[Added ATM 4-4-1988, Art. 46]

§ 240-97. Purpose.

The purpose of this Article is to preserve the water quality in Falmouth's coastal ponds and harbors in accordance with adopted plans for both development and preservation, while recognizing that the public sector has an equal role with private sectors in meeting the established goals for swimmable, fishable and usable water of the highest possible esthetic and natural quality.

§ 240-98. Establishment and delineation of Coastal Pond Overlay District.

This article shall apply to all developments listed here:

- A. Subdivisions greater than five lots or greater than five acres.
[Amended ATM 12-16-1991, Art. 3]
- B. Commercial development requiring site plan review.
[Amended ATM 4-2-1990, Art. 14]
- C. Special permit uses filed in accordance with Article **XLII** of this chapter within 2,000 feet of those water bodies listed in § **240-100** that do not have defined recharge areas.
[Amended AFTM 11-13-2001, Art. 3, approved 3-15-2002; AFTM 11-14-2005, Art. 2, approved 12-8-2005]

For the purposes of this article, there is hereby established in the Town of Falmouth the Coastal Pond Overlay District, which is an overlay district superimposed on the zoning

districts. This district is depicted on a map entitled "Recharge Areas of Coastal Ponds in Falmouth" dated August 1, 2001, scale one inch equals 2,000 feet on file with the Town Clerk. "Watersheds of Coastal Ponds Massachusetts Estuaries Project" dated August 14, 2018, scale 1:18,000 on file with the Town Clerk.

[Added AFTM 11-6-1995, Art. 14, approved 12-26-1995; AFTM 11-13-2001, Art. 3, approved 3-15-2002; 11-13-2018 FATM, Art. 6, approved 2-21-2019]

- [1] *Editor's Note: The former title of § 240-98, Applicability, was specifically amended AFTM 11-6-1995, Art. 14, approved 12-26-1995.*

§ 240-99. Procedures.

- A. All such development proposals listed in § **240-98** must file an analysis of development impact as specified by § **240-113C(1), (2), (3) and (4)(a), (b) and (c)** with the application made to the reviewing board.
- B. The reviewing board shall make all findings regarding the analysis and may withhold approval if the proposal does not comply with the standards of this Article. However, the reviewing board shall not withhold approval of an application if the applicant provides measures for the reduction of the nutrient loading rate, on a pounds-per-acre basis, to a rate below that which would produce critical eutrophic levels in the receiving water body. It shall be the responsibility of the applicant to demonstrate that the proposed mitigating measures will work as designed, and the reviewing board may require the applicant to demonstrate on an annual basis that said mitigating measures are operating satisfactorily.

[Amended AFTM 11-6-1995, Art. 14, approved 12-26-1995]

§ 240-100. Restrictions.

[Amended AFTM 11-6-1995, Art. 14, approved 12-26-1995]

Development subject to this Article shall be restricted in accordance with the following goals and standards:

- A. High quality areas: Areas designated as high quality areas shall be provided the highest level of protection. These estuarine areas support high-quality shellfish and areas of high scenic and esthetic quality. Those development proposals not meeting the standards for these areas must be permanently restricted as necessary to reduce nutrient loading including such actions as:
 - (1) Reductions in number of units, bedrooms, rooms or leasable square footage of a building; reduction of the number of lots in a subdivision.
[Amended AFTM 11-6-1995, Art. 14, approved 12-26-1995]
 - (2) Improvements to area road drainage, pond circulation and other physical conditions within and around the affected water body.
 - (3) The applicant may be required to install a septic system that has certification from Massachusetts Department of Environmental Protection (Mass. DEP) for general, provisional or, if approved by the Board of Health, pilot use for nitrogen reduction. To reduce the overall need for management oversight and to achieve higher nitrogen removal performance, the Reviewing Board shall require the collection of wastewater flows and the use of shared treatment facilities (also known as "cluster" systems). If the applicant demonstrates to the Reviewing Board that a cluster system is not technically feasible, individual nitrogen-removing on-site systems shall be required instead. In reviewing the range of technologies available and permitted in the commonwealth, the Reviewing Board may limit any project proposed in the Coastal Pond Overlay District to wastewater

discharge total nitrogen concentrations of twelve (12) mg/l or less and require that the treatment systems are properly operated and maintained by a licensed wastewater treatment plant operator. The twelve-mg/l or less standard assumes water use of approximately one hundred ten (110) gallons per day per bedroom, and shall be achieved at the fifty-percent build-out phase of the development.

[Added AFTM 11-8-2004, Art. 5, approved 12-30-2004]

HIGH QUALITY AREAS

Megansett Harbor
Wild Harbor
Rands Canal
Seapit River
Israels Cove
Waquoit Bay
Herring River from Buzzards Bay to Wing Road
West Falmouth Harbor to Chappaquoit Road
Snug Harbor inland to Nashawena Road
Waterways within the Great Sippewissett Marsh
Waterways within the Little Sippewissett Marsh
Outer Quissett Harbor from entrance inland 1,400 feet
Great Harbor west from Gosnold Road
Great Pond inland from Vineyard Sound to Bourne Street
Bournes Pond from Vineyard Sound to Gayle Avenue
West branch of Eel Pond to Fisher Road
East branch of Eel Pond to Seapit River
Green Pond from Vineyard Sound to Green Harbor Road

- B. Stabilization areas: Areas designated as stabilization areas shall allow higher nitrogen loading than high quality areas if those loadings, when combined with public and private capital improvements in a comprehensive program, including dredging, channel openings, drainage improvements, animal control, upgrading of septic systems as necessary, etc., would eventually improve water quality in those areas to a point higher than the established standard. Development proposals exceeding the limit for these areas may be temporarily restricted until such improvements are made.

STABILIZATION AREAS

Wild Harbor River
Little Pond
Oyster Pond
Hamblins Pond
Salt Pond
Perch Pond
Green Pond above the Menauhant Bridge
Moonakis River south of Route 28
Great Pond north of Bourne Street to Route 28
Bourne Pond north of Gayle Avenue to Route 28
Eel Pond east branch between Seapit River and Atwater Drive

- C. Intensive water activity areas: Areas designated as intensive water activity areas are set aside for the most intensive land uses and active water uses where esthetic quality is the principal water quality concern. Water quality standards shall be the least stringent in these areas to accommodate planned growth and development.

INTENSIVE WATER ACTIVITY AREAS

Great Harbor east of Gosnold Road

Eel Pond, Woods Hole

Inner Quissett Harbor

Little Harbor, Woods Hole

Falmouth Harbor

Fiddlers Cove

Childs River south of Route 28 to Atwater Drive

Green Pond between the south end of Green Harbor Road and Menauhant Road

- D. Standards:

- (1) Critical eutrophic levels for each of the areas shall be as follows:
 - (a) High quality areas, thirty-two hundredths (0.32) mg/l total nitrogen;
 - (b) Stabilization areas, fifty-two hundredths (0.52) mg/l total nitrogen;
 - (c) Intensive water activity areas, seventy-five hundredths (0.75) mg/l total nitrogen.
- (2) These shall be considered as averages over a year.

§ 240-101. Exemptions.

- A. The special permit granting authority may exempt an application from the requirements of Article **XXI** provided that the applicant can demonstrate that:
- (1) Nutrients from the development will not in fact be recharged to the designated water body or public water supply well; or
 - (2) The development will not result in any increase in loading of the relevant nutrient.
- B. In addition to the exemptions found in Subsection **A(1)** and **(2)**, any development which is in the recharge zone of a coastal pond proven to already exceed the limits found in § **240-100D**, Standards, may be exempted from the requirements of § **240-99A**, Analysis of development impact. As part of this exemption, the development must accept the findings of the Planning Board or special permit granting authority and comply with the requirements of § **240-100**, Restrictions.

§ 240-102. Supersession of other provisions.

The requirements of this Article shall supersede the standards of § **240-113C(4)(d)** for salt water.

Article XXII. Parking Requirements

[Amended ATM 4-3-1979, Art. 103]

§ 240-103. Applicability.

[Amended ATM 4-4-1985, Art. 70; ATM 4-7-1986, Art. 93]

The following shall apply to all premises in all districts, except as provided in § **240-104**.

§ 240-104. Waiver of parking requirements.

[Amended ATM 4-7-1986, Art. 93]

A. Finding that Business 1 districts on Main Street are unique, having a large amount of public parking spaces available, and further finding that in order to enhance the economic vitality of downtown Main Street, some expansion of retail activity balanced with residential development is desired and possible, parking requirements shall be waived for the following:

- (1) All lots in which the ground floor of existing or proposed structures are devoted solely to the uses specified in § **240-48A, C and D**, and in which the existing or proposed structure does not exceed 60% coverage of the lot, and does not exceed a floor-space to lot-area ratio (FAR) of more than six-tenths (0.6), whichever is less.
- (2) Residential dwellings as permitted under § **240-51A(2) and (5)**, may be added over and above the FAR restriction of Subsection A(1)(a) above only when said dwellings are located above the ground floor, the total FAR of the building does not exceed 1.0; i.e., total floor space equal to total lot area; the lot coverage by buildings does not exceed 60%, and the building conforms to required height limitations.

[Amended STM 10-24-1989, Art. 71]

B. Any expansion, new construction or reconstruction using the above waivers shall require a special permit from the Zoning Board of Appeals under Article **XXXIX**, regardless of the number of parking spaces which may otherwise be required.

[Amended STM 10-24-1989, Art. 71]

§ 240-105. Performance requirement.

Off-street parking must be provided to service the net increase in parking demand created by new construction, additions or change of use. Buildings, structures and land uses in existence April 2, 1979, are not subject to these requirements so long as they are not enlarged or changed to increase their parking needs.

§ 240-106. Number of spaces.

The standards below must be met without counting any existing parking necessary for existing activities to meet these requirements. The additional parking required for a change of use or addition equals the parking requirements under § **240-108** for the premises as existing, or the actual amount of existing parking retained, if greater. Requirements are added for mixed uses (e.g., both motel room and restaurant requirements would apply to a motel with restaurant).

§ 240-107. Parking reductions.

[Amended STM 10-24-1989, Art. 71]

A. Reduction by right.

- (1) The total off-street parking required to service retail, business or professional use(s) of the lot may be reduced in the following manner:

Number of Spaces	Reduction
0 - 20	No reduction
21 - 30	10% reduction
31 - 40	15% reduction
41 - 50	20% reduction
Over 50	25% reduction

- (2) The area preserved by the above reduction shall be planted and shall not be applied to the minimum area required to be left without cover under § **240-68A**.

- B. Reduction by special permit. The required number of spaces may be further reduced below that indicated below on special permit from the Board of Appeals upon the Board's determination that special circumstances, such as shared use of a parking lot by activities having different peak demand times, render a lesser provision adequate for all parking needs. For uses allowed only on a special permit, the special permit granting authority may similarly require a larger number of parking spaces to be provided than indicated if necessary to service anticipated demand.

§ 240-108. Table of Minimum Requirements.

[Amended ATM 4-6-1987, Art. 78; ATM 4-5-1988, Art. 45; ATM 4-3-1989, Art. 50]

Table of Minimum Requirements

RESIDENTIAL

Dwelling unit having 2 or more bedrooms	2 spaces
Dwelling unit having fewer than 2 bedrooms	1.5 spaces
Hotel or motel guest unit	1 1/10 spaces
Guesthouse, lodging house, other group accommodation	1 space per rentable room
Nursing home	1 space per 3 beds
Multifamily developments	1.5 spaces minimum per dwelling unit having fewer than 2 bedrooms

Table of Minimum Requirements

NONRESIDENTIAL

Retail sales, service	1 space per 200 square feet leasable floor area, but not fewer than 3 spaces per separate enterprise
Business or professional	1 space per 250 square feet leasable floor area
Shopping center containing at least 50,000 square feet	1 space per 250 square feet leasable floor area
Bank, post office	1 space per 300 square feet leasable floor area
Restaurant, bar	1 space per 2 seats
Fast-food restaurant and restaurants with take-out	1 space per seat but no fewer than 10 spaces per establishment station

Table of Minimum Requirements

NONRESIDENTIAL

Industrial, wholesale, bulk retail	1 space per 1.3 employees, but capable of expansion to not fewer than 1 space per 300 square feet leasable floor area
Hospital	3 spaces per bed
Place of public assembly	1 space per 3 persons capacity based on Massachusetts State Building Code
Sports/health clubs	1 space per 200 square feet building area
Bowling alley, tennis court	3 spaces per alley or court
Theatre	1 space per 2 seats
Marina	1 space per 1 berth (1 space per boat capacity)
Laundromat	1 space per 2 machines
All other uses	Parking spaces adequate to accommodate all normal demand, as determined by the Building Inspector

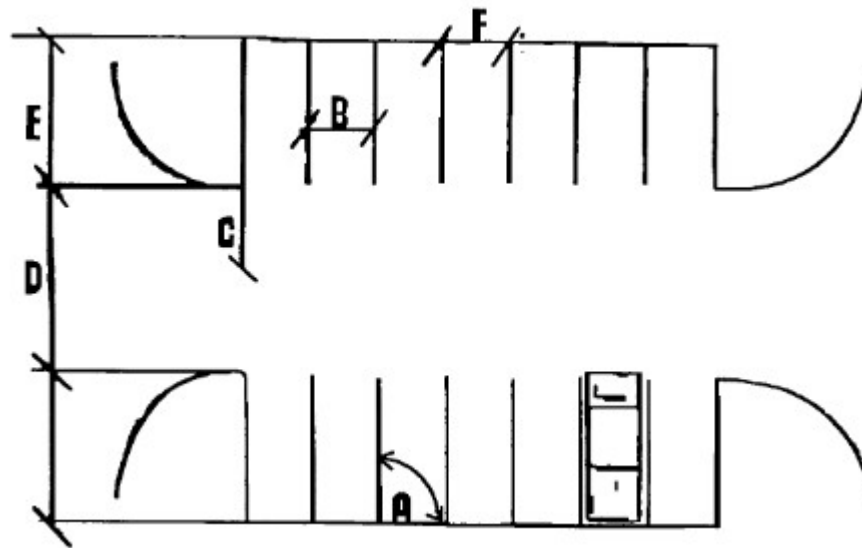
§ 240-108.1. Off-street parking and loading requirements.

[Added STM 10-2-1990, Art. 10, approved by AG 1-9-1991]

- A. Whenever off-street parking for five or more automobiles is required under this Article **XXII**, the following minimum requirements shall apply:

A	B	C	D	E	F
Parking Angle (degrees)	Stall Width (feet)	Aisle Width (1-way)	Aisle Width (2-way)	Parking Stall Length (feet)	Curb Length (feet)
90	9	16	24	18	9.4
60	9	13	24	18	10.4
45	9	12	*	19	12.7
0	9	12	24	23	23.0

* One-way traffic only



- 2 plus 1 space for each 20,000 square feet in excess of 50,000 square feet

seasonal or periodic use where an alternative surface will prevent dust, erosion, water accumulation or unsightly conditions. No such required driveway or parking area shall be designed or constructed so as to cause stormwater drainage to flow onto any roadway.

[Amended ATM 4-7-1982, Art. 49]

- C. Backing. Parking areas with five or more spaces shall be designed and located so that their use does not involve vehicles backing onto a public way.
- D. Egress. There shall be not more than two driveway openings onto any street from any single premises unless each opening center line is separated from the center line of all other driveways serving 20 or more parking spaces, whether on or off the premises, by 200 feet (measured at the street line) in a Business District or by 300 feet if in any other district. No such opening shall exceed 24 feet in width at the street line unless necessity of greater width is demonstrated by the applicant, and the opening is designed consistent with Massachusetts DPW regulations Section 10A-9 or subsequent revisions. No driveway side line shall be located within 20 feet of the street line of an intersecting way. All driveways serving five or more parking spaces shall be constructed with a minimum edge radius of five feet on both sides. All driveways serving 40 or more parking spaces must have not less than 250 feet visibility in each travel lane entering a state-numbered or maintained highway, and not less than 150 feet visibility on other streets.
- E. Prohibited parking areas. No part of any private parking area having five or more parking spaces shall be located within a front yard as defined in Article III, Definitions, nor shall any private parking area be located within five feet of any property line. The Planning Board may, by special permit, allow parking in front yards or within five feet of a property line. Parking areas for marine and business uses shall be at least 15 feet from the property line of any existing residential district or use. No part of any private parking area serving a nonresidential use shall be located in or interfere with any area utilized for off-street loading or unloading of materials or merchandise, including but not limited to gasoline dispensing or storage facilities, loading docks or stacking areas for drive-thru windows.
[Amended STM 4-9-1980, Art. 23; ATM 4-8-1981, Art. 53; ATM 4-4-1985, Art. 64; ATM 4-5-1989, Art. 39; STM 10-2-1990, Art. 16, approved 1-9-1991; ASTM 4-3-1995, Art. 14]
- F. Light Industrial Districts parking lots.
[Amended ATM 4-8-1981, Art. 53; ATM 4-7-1992, Art. 22]
 - (1) In all Light Industrial Districts, no parking area shall be closer than 40 feet to the street line nor closer than 25 feet to any other lot line, except that in Light Industrial A and C only, a parking area may be within 15 feet of any other lot line if that adjacent lot is also zoned for light industrial uses or for business uses.
[Amended AFTM 11-7-2011, Art. 3, approved 1-31-2012]
 - (2) In Light Industrial B Districts, 600 square feet of off-street parking shall be provided for each 1,000 square feet of floor area of any building erected on the premises. No single parking area shall extend for more than 150 feet in width; adjacent parking areas may be connected by a common access driveway, but each such parking area shall be separated from an adjacent parking area by not less than 10 feet of natural or planted area.
- G. Bicycle racks. For parking areas of 40 or more spaces, bicycle racks facilitating locking shall be provided to accommodate one bicycle per 20 parking spaces required or fraction thereof.
- H. Drive-thru establishments; site standards.
[Added ASTM 4-3-1995, Art. 13]
 - (1) Setbacks for stacking areas. Motor vehicle stacking areas shall be setback a minimum of 10 feet from all property lines.

- (2) Dimensional requirements for stacking spaces. Each stacking space shall be a minimum of 10 feet wide and 20 feet long and shall not include the use of any parking space, street, sidewalk or parking aisle area. Stacking areas shall be separated from other internal driveways. All stacking areas serving a drive-thru window shall have an inside radius of no less than 25 feet.
- (3) Stacking area requirements. Vehicle stacking areas shall be provided according to the following for drive-thru establishments:
 - (a) Fast-food restaurant: seven stacking spaces for the first drive-thru window, plus two stacking spaces for each additional window.
 - (b) Other uses with drive-thru windows: three stacking spaces per window.
- (4) Curb cuts. All curb cuts serving a drive-thru establishment shall have a minimum center line offset distance of 300 feet from any other curb cut serving a drive-thru establishment. All curb cuts must conform to Massachusetts Highway Department regulations, the latest edition concerning geometry and traffic circulation.

Article XXIII. Performance Requirements

§ 240-110. Nuisances.

No use shall be permitted which would be offensive because of injurious or obnoxious noise, vibration, smoke, gas, fumes, odors, dust or other objectionable features, or be hazardous to the community on account of fire or explosion or any other cause. No permit shall be granted for any use which would prove injurious to the safety or welfare of the neighborhood into which it proposes to go, and destructive of property values, because of any excessive nuisance qualities.

§ 240-111. Site design.

[Added ATM 4-4-1979, Art. 102; amended STM 10-24-1989, Art. 72; AFTM 11-17-1997, Art. 6, approved 2-27-1998]

Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment, and shall be so designed that for the given location and type and extent of land use, the design of building form, building location, accessways and driveways, including common driveways, egress points, grading and other elements of the development could not be reasonably altered to:

- A. Improve pedestrian or vehicular safety and convenience within the site, egressing from it and in relation to adjacent areas; provide better access to each structure for fire and service equipment;
- B. Reduce detrimental impact on neighborhood visual character including views and vistas, intrusion of parking areas viewed from public ways and abutting premises and glare from headlights or area lighting; improve landscaping and buffering;
- C. Reduce the extent of stormwater flow increase from the site and reduce the hazard and inconvenience to pedestrians from stormwater flow and ponding; increase protection of adjacent areas including wetlands from detrimental effects by providing adequate surface water drainage;
- D. Improve adequacy of water supply, sewage disposal, disposal of refuse and byproducts, lighting and other public services;

- E. Reduce removal of trees with four-inch trunk diameter or larger and reduce the area of wetland vegetation displaced;
- F. Reduce the volume of cut or fill;
- G. Reduce soil erosion; and
- H. Assure protection of environmental features on site and in adjacent areas.
- I. Improve the collection of solar energy by photovoltaic and/or hot water systems.
[Added ATM 4-8-2019, Art. 25, approved 7-11-2019]

§ 240-112. Stormwater management.

[Added ATM 4-2-1990, Art. 15]

- A. Intent. The intent of this section is to alleviate pollution problems caused by existing or proposed storm drain systems which discharge directly into the Town's streams, ponds, lakes, coastal waters or other sensitive areas through the prohibition of direct discharge from roadways, parking lots, driveways or similar uses.
- B. Design requirements:
 - (1) Installation and materials unless otherwise specified shall conform to the standards of the Massachusetts D.P.W. Standard Specifications, 1985, as amended.
 - (2) No road or other surface shall be regraded, constructed or maintained in such a manner as to divert or direct the flow of runoff into any wetland as defined in MGL C. 131, § 40, and any other area protected by this Act.
 - (3) Uncontaminated runoff should be directed in such a way as to recharge the groundwater within the lot where it originates, unless an alternative location is approved.
 - (4) Open detention and retention basins may not be located within velocity zones as depicted on FEMA FIRM maps of the Town.
 - (5) Design calculations based on a twenty-five-year storm are required. Percolation tests may be required.
 - (6) Cellar/basement drains and sump pumps may not directly discharge into wetlands or waterways.
 - (7) Oil capture separation and sedimentation devices may be required.

§ 240-113. Special permit requirements in recharge zones for transient residential facilities.

[Added ATM 4-4-1984, Art. 51]

- A. The special permit granting authority may withhold approval of a special permit for the construction of any new structure or structures or portion thereof intended for transient residential use, requiring a special permit as defined by this chapter, which are located on a lot or lots that lie within a zoned water recharge area (see Subsection **B**), if, after weighing all the pertinent facts and evidence the special permit granting authority finds that:

- (1) The existing condition of the receiving waters is at or above critical eutrophic levels [see definition Subsection **C(4)(d)**], or in the case of well recharge areas, nitrate-nitrogen concentrations in the groundwater exceed five parts per million; and
 - (2) The nutrient contribution from the proposed development, when added to the existing and potential nutrient level of developments within the specific recharge area, will generate on a pounds-per-acre basis, nutrient levels that exceed the receiving waters' critical eutrophic level or, in the case of well recharge areas, nitrate-nitrogen concentrations in the groundwater in excess of five parts per million. However, the special permit granting authority shall not withhold approval of an application for a special permit if the applicant provides measures for the reduction of the nutrient loading rate, on a pounds-per-acre basis, to a rate below that which would produce critical eutrophic levels in the water body or, if in a well recharge area, nitrate-nitrogen concentrations less than five parts per million. It shall be the responsibility of the applicant to demonstrate to the special permit granting authority that the proposed mitigating measures will work as designed, and the special permit granting authority may require the applicant to demonstrate on an annual basis that said mitigating measures are operating satisfactorily.
- B. Recharge areas. Recharge areas for freshwater ponds, coastal ponds and existing or proposed public (municipal) water supply wells, as shown on the Zoning Map, shall be considered superimposed over any other districts established in this chapter.
- C. Analysis of development impact. The applicant, under this section, shall provide an analysis of development impact which at a minimum includes the following:
- (1) The existing condition of the water body or water supply, including physical characteristics and water chemistry;
 - (2) The expected change in the condition of the water body or water supply as a result of the proposed development;
 - (3) The comparison, on a per-acre basis, of the total nutrient loading from the proposed development with:
 - (a) The existing and potential loading from all other developments and acreage within the recharge area of the water supply or water body; and
 - (b) The loading rate which would be expected to produce critical eutrophic levels in a water body or in the case of water supply, the loading rate which would produce nitrate-nitrogen levels in excess of five parts per million in the groundwater.
 - (4) In determining the impact of nutrient loading from a development, the following standards and definitions shall be used: *
 - (a) Loading per person: five pounds nitrogen per person per year; twenty-five hundredths (.25) pounds phosphorous per person per year for sewage disposal systems within 300 feet of the shoreline;
 - (b) Loading from lawn fertilizers: three pounds nitrogen per 1,000 square feet per year;
 - (c) Loading from road runoff: nineteen hundredths (.19) pounds nitrogen per curb mile per day; fifteen hundredths (.15) pounds phosphorous per curb mile per day;
 - (d) Critical eutrophic levels: freshwater concentration, total phosphorous = two hundredths (.02) mg./litre; saltwater concentration, total nitrogen = see Article **XXI**. (Coastal Pond Overlay District).

*Unless the applicant demonstrates to the special permit granting authority that given the nature of the proposed project and/or receiving waters other standards are appropriate.

- D. Exemptions. The special permit granting authority may exempt an application from the requirements of Subsection **A** provided that the applicant can demonstrate that:
- (1) Nutrients from the development will not in fact be recharged to the designated water body or public water supply well; or
 - (2) That the development will not result in any increase in loading of the relevant nutrient.
- E. Relation to other requirements of the Zoning Bylaw. Approval of a special permit as noted in Subsection **A** shall not substitute for compliance with any other requirements of the Zoning Act or Falmouth Zoning Bylaw.

§ 240-113.1. Transportation and traffic management.

[Added ASTM 4-5-1999, Art. 12, approved 7-23-1999]

- A. Development and redevelopment subject to site plan review shall not degrade existing levels of service (LOS) of surrounding roads and intersections based on summer peak hour traffic volumes. Levels of service shall be measured using performance indicators such as reserve capacity, delay at intersections and volume-to-capacity ratio as defined in the Highway Capacity Manual, latest edition. (NOTE: Highway Capacity Manual, Transportation Research Board, Washington, D.C.)
- B. Developments and redevelopment subject to site plan review shall mitigate any traffic impacts that would be created by such developments. The mitigation strategies shall include both structural and non-structural improvements with special emphasis on alternatives to automobile transportation. Necessary improvements shall occur concurrently with any development or a contribution of funds towards the necessary improvement shall be provided.
- C. Development and redevelopment subject to site plan review shall make provision for alternative transportation modes to offset at least 20% of any projected increase in traffic volumes. Acceptable alternatives include but are not limited to carpool programs, shuttle bus service, employee housing on-site, and related programs. In lieu of providing these services in-kind, the developer may make a contribution to the Cape Cod Regional Transit Authority or a private transit company approved by the Town in order to provide public transportation. Development and redevelopment shall incorporate provisions for bicyclists and pedestrians so as to minimize automobile trips.

§ 240-113.2. Table of Performance Indicators for Restaurant Classifications.

[Added ASTM 4-5-1999, Art. 13, approved 7-23-1999]

	Column A		Column B		Column C	
Type of Service	Table	10	Cafeteria/ Counter	25	Drive- thru	40
Takeout sales	0 — 25.9%	10	26 — 50%	25	51% or more	40
Timing of payment	After eating	10	After and before eating	25	Before eating	40

	Column A		Column B		Column C	
Hours of operation	AM	10	PM	25	Noon	40
Type of container	Reusable	10	Reusable & disposable	25	Disposable	40
Consumption	On premises	10	On & off premises	25	Off premises	40
Advertising	Cape/local	10	Regional	25	National	40
Size (seats)	25 or less	10	26-50	25	51 or more	40

Restaurant classification is determined by summing all of the performance indicators in each row that apply, then summing in the following manner:

Type of service	Choose A, B and/or c as applicable	Maximum score 75
Takeout sales	Choose one: A, B or C	Maximum score 40
Timing of payment	Choose one: A, B or C	Maximum score 40
Hours of operation	Choose A, B and/or C as applicable	Maximum score 75
Container	Choose one: A, B or C	Maximum score 40
Consumption	Choose one: A, B or C	Maximum score 40
Advertising	Choose one: A, B or C	Maximum score 40
Size	Choose one: A, B or C	Maximum score 40

Note: Examples can be found in the Appendix of the Code of Falmouth, as presented to the SATM 1999, Article 13.

Article XXIV. Landscape Requirements

[Amended ATM 4-4-1979, Art. 102; ASTM 4-6-1992, Art. 22]

§ 240-114. Purpose and intent.

- A. The purpose of landscape regulation is to protect the general health, safety and welfare of the residents of Falmouth; to assist in reducing incompatibility between abutting uses; to provide barriers and relief from traffic, noise, heat, glare, fumes, dust and debris; to preserve and enhance the character of the community; to prevent soil erosion and silting of drainage structures and water bodies; to retain existing significant trees, and protect rare and endangered plant species and wildlife; and to provide shade and windbreaks.
- B. To this purpose, it is the intent of the Town that streets, sidewalks and parking spaces be shaded by trees; that parking, service and outdoor storage areas be screened from view of the street and neighboring properties; that residences be buffered from commercial activities; and that impervious surfaces and ground without vegetative cover be minimized.

§ 240-115. Landscape plan required.

All development projects other than single- or two-family dwellings that require a special permit or review under Articles **XXXVIII** and **XXXIX** shall submit a landscape plan as part of the required application.

§ 240-116. Procedure.

The landscape plan shall be part of the application for which it is required in § **240-115**. It shall be drawn at a scale of no greater than one inch = 20 feet. When required by the permitting board the plan shall be prepared by a landscape architect, arborist or horticulturalist, registered with the Commonwealth of Massachusetts. Each sheet shall be signed and sealed and numbered as a part of the total.

§ 240-117. Plan contents.

The landscape plan shall show the location of existing trees of greater than four inches in trunk diameter at a height of four feet six inches, vegetation to remain undisturbed after development, vegetation to be planted, landscape objects and structures, vehicle and pedestrian ways and finished topography. Individual specimens of trees and shrubs shall be represented on the plan. Herbaceous perennials, annuals, bulbs and ground covers may be represented as planting areas. A list shall be on the plan containing plant names (genus, species, variety and/or cultivar), quantities, size when planted and height at maturity. A list of approved street trees and buffer species is available in the Planning office.

§ 240-118. Definitions.

ANNUAL — A plant with soft and fleshy stems which lives for only one or two years.

BERM

A mound of earth covered with plants and used as a screen.

BUFFER OR SCREEN

Any landscape object or structure (such as a fence, berm or hedge) used to hide something from view or as a barrier for privacy, security or from noise, wind or dust.

DECIDUOUS

Any woody perennial which drops its leaves in autumn or winter.

EVERGREEN

Any woody perennial which retains its leaves throughout the year.

FORMAL

A landscape designed primarily on classical geometric lines, usually requiring high maintenance.

GROUND COVER

Low shrubs, herbaceous perennials or reseeding annuals which are planted to cover the ground completely at maturity to stabilize slopes or substitute for a lawn.

HEDGE

Shrubs planted close together in a solid line to delineate a space, form a border or create a screen for privacy.

HERBACEOUS PERENNIAL

A perennial plant with soft and fleshy stems which dies back to the ground in winter.

LANDSCAPE

n. the spatial relationship of the topography, structures and vegetation.

v. to modify or ornament nature by altering topography, structures or vegetation.

LANDSCAPE OBJECT

Any fixed feature in the landscape which does not require a building permit.

MULCH

Organic material used to temporarily cover the ground until plants can reach maturity and cover it.

NATURALIZED

A landscape designed primarily on curved lines to mimic nature which usually requires little maintenance.

PERENNIAL

A plant which lives for more than two years.

SERVICE AREA

Any area which contains a loading dock, dumpster or outdoor storage of merchandise, vehicles or equipment.

SHRUB

A woody perennial plant growing to a height of 15 feet or less at maturity.

SIGHT TRIANGLE

An area free of obstructions which might interfere with a driver's ability to see other vehicles approaching an intersection.

STREET TREE

A tree with characteristics (such as sturdy limbs, deep root system or lack of low branches) which make it desirable for planting near pavement or underground utilities.

TREE

A woody perennial plant growing to a height of 15 feet or more at maturity.

UNDISTURBED

A landscape design which primarily utilizes existing plants in a natural state and requires no maintenance.

VEGETATED ISLAND

An area inside a paved parking area covered with vegetation instead of pavement.

XERISCAPE

A landscape designed with native, drought-tolerant species which require little fertilizer.

§ 240-119. Performance standards.

For the purposes stated above, the following standards are required to be met. Alternative methods to those described below may be substituted if the applicant demonstrates to the satisfaction of the reviewing agency or special permit granting authority that the intent of this Article is upheld.

A. Xeriscape. To aid in conserving the Town of Falmouth's drinking water supply, xeriscape is required for all applicable development projects unless any of the following criteria are met:

- (1) The applicant provides water for the landscape from a private well.
- (2) The applicant installs an irrigation system (which may use Town water) but only those

which drip or mist. Spray or sprinkle irrigation using Town water is prohibited.

- B. Planting medium. To reduce the need for watering and fertilizing and to help maintain healthy plants, in formal and naturalized landscapes, soil shall be no more than 25% sand, no more than 10% clay and no less than 65% silt, and decayed organic matter in an amount equal to 25% of the soil by volume shall be added. This is required to the following depths:
 - (1) Where trees are planted, to a minimum of four feet within a four-foot radius of the trunk.
 - (2) Where shrubs are planted, to a minimum of two feet within a two-foot radius of the trunk(s).
 - (3) Where ground covers, herbaceous perennials, annuals or bulbs are planted, to a minimum of one foot within the planting area.
- C. Mulch. To prevent soil erosion, weed growth and to help retain moisture and insulate young plants, mulch is required in formal and naturalized landscapes wherever soil is not covered by vegetation.
 - (1) Mulch shall be applied on the soil surface in a layer two to four inches deep.
 - (2) Mulch shall be used as a temporary cover during the first three growing seasons until vegetation grows to completely cover the ground. Mulch shall not be used as a substitute for ground covers.
 - (3) Ground or shredded bark, peat moss, pine needles, tree leaves, straw or hay may be used as a mulch.
 - (4) Gravel or stone chips may be used in areas of high pedestrian traffic, but shall not exceed 10% of the landscaped area.
- D. Street trees. To reduce heat and glare on streets and sidewalks, street trees from the approved list are required to the following specifications:
 - (1) Except in B1 Districts, street trees shall be planted no greater than 30 feet apart on a line five feet behind the street frontage. Where an access driveway interrupts this pattern, street trees shall be planted on either side of the driveway, five feet from the edge of pavement and behind the sight triangle at the intersection. Existing vegetation meeting the intent of this Article may be substituted for these requirements.
 - (2) When planted, street trees shall have a trunk diameter of at least two inches at a height of four feet six inches, and shall be free of limbs below seven feet.
 - (3) Street trees shall be maintained so as to reach a height of at least 45 feet at maturity.
- E. Front yards. With the exception of certain overlay zones, front yards may be formal, naturalized or undisturbed so long as all surface areas which are not parts of walkways or driveways are completely covered by vegetation within three years.
 - (1) Front yards in Water Resource Protection Districts (see Article **XV**) or in Coastal Pond Recharge Districts (see Article **XXI**) shall be naturalized or undisturbed.
 - (2) Front yards in the Wildlife Corridor Overlay District (see Article **XX**) shall be undisturbed.
- F. Parking lot screens. Between the front yard and the parking area, a screen is required so that automobiles cannot be viewed from the street. This may be achieved using any combination of the following:

- (1) A row of evergreen and deciduous trees at least six feet high, with no more than 50% being deciduous, from the approved list of buffer species, and planted at intervals recommended on the approved list.
 - (2) A hedge at least three feet high, to grow to a minimum of four feet high at maturity.
 - (3) A berm at least four feet high with no slope greater than three to one (3:1), mulched and planted so as to be completely covered by vegetation in three years.
 - (4) A solid fence or wall at least four feet high, the faces of which shall be planted with shrubs at an interval of not less than one every 20 feet with the intervening faces planted with herbaceous perennials, annuals or bulbs in an area not less than two feet wide.
- G. Parking lot interiors. Vegetated islands are required within paved areas behind the street setback according to the following specifications:
- (1) For each parking stall, 40 square feet of vegetated island shall be provided within the paved area. The minimum dimension of each vegetated island shall be four feet, except at corners, and the minimum area shall be 162 square feet.
 - (2) No fewer than one street tree as described in Subsection **D(1)** shall be planted for each 162 square feet of vegetated island.
 - (3) The remainder of the parking area not used for stalls or driveways shall be planted with any combination of trees, shrubs, ground cover, herbaceous perennials, annuals or bulbs so that the ground is completely covered after three growing seasons.
 - (4) Plants within necessary sight triangles shall be no greater than two feet high.
 - (5) Vegetated islands are required to separate rows of parking stalls and interior driveways.
- H. Service area screens. Where service areas exist, they shall be screened from view of the street, parking areas and adjacent properties. This may be achieved using any combination of the following:
- (1) A row of evergreen and deciduous trees, at least six feet high, with no more than 30% being deciduous, from the approved list of buffer species, and planted at intervals recommended on the approved list.
 - (2) A solid fence or wall at least six feet high.
- I. Residential buffers. A buffer is required between business or industrial uses and residences, nursing homes, hospitals or similar uses. The buffer shall protect abutting properties from glare, noise, dust, fumes, heat and traffic. This may be achieved using any of the following:
- (1) Two rows of evergreen trees, from the approved list of buffer species, at least six feet high, planted at intervals recommended on the approved list, and faced with a row of shrubs at least three feet high.
 - (2) One row of evergreen trees, from the approved list of buffer species, at least six feet high, planted at intervals recommended on the approved list, and faced with a row of shrubs at least three feet high, and backed with a solid fence or wall at least six feet high.
 - (3) A berm a minimum of five feet high, with no slope greater than three to one (3:1), planted with trees and shrubs so that the ground is completely covered with vegetation.

§ 240-120. Maintenance and performance guaranty.

- A. Landscaping shall be installed upon completion of the development project and arrival of the first appropriate planting season for each species. Plant materials shall be maintained in a healthy condition. Any plants which die or are damaged so as not to perform their function according to this Article shall be replaced within one year.
- B. Failure to meet the performance standards of this Article may result in the forfeiture of any performance guaranties held by the Town of Falmouth in association with the project, or the denial of occupancy permits, or the imposition of fines as authorized in § **240-184**.^[1]

[1] *Editor's Note: Original Section 5500, Route 28A moratorium, was deleted as its provisions have expired.*

Article XXV. Planned Residential Development

[Amended ATM 4-5-1983, Arts. 50, 51, 52, 53 and 54; ATM 4-4-1984, Art. 54; ATM 4-1-1985, Art. 56; ATM 4-4-1985, Art. 58; ATM 4-9-1986, Art. 78]

§ 240-121. Applicability.

Any provisions of requirements for residential districts in this chapter to the contrary notwithstanding, any parcel of land or aggregation of parcels of land when shown on a plan endorsed by the Planning Board as "Approved for Planned Residential Development," lots of less than the minimum areas, setbacks, widths, coverage or frontages specified in Article **XIV** may be laid out and dwellings of different types may be erected on such lots and existing recreational uses or existing agricultural uses may be included within the perimeter of the parcel as a mixed-use development but only in conformance with conditions set forth herein.

§ 240-122. Purpose.

The Planning Board may permit the use of the Planned Residential Development District if, in the Planning Board's sole judgment:

- A. Agricultural or farming activity will be preserved and protected from redevelopment;
- B. The natural integrity of environmentally sensitive or wildlife habitat areas will be enhanced;
- C. Scenic vistas will be highlighted and preserved;
- D. Existing recreational activities, integral with the regional and local tourist and recreational economy, which cannot otherwise be self-supporting, will be preserved and protected from redevelopment;
- E. The excellence of the overall design and residential amenities are such as to warrant special consideration for modification of existing standards elsewhere in this chapter;
- F. The proposed development is consistent with all municipal comprehensive plans and objectives; and
- G. The proposed development site plan is designed in its space allocation, proportions, orientation, materials, landscaping and other features as to produce a stable and desirable character, complementary and integral with the site's natural features.

§ 240-123. Special permit required.

The designation of planned residential development shall require a special permit. The special permit granting authority for planned residential development shall be the Planning Board. Such endorsement by the Planning Board may be given only when and if the plan meets the following minimum requirements and conditions and four or more of the purposes of § **240-122**.

§ 240-124. Total area.

[Amended ATM 4-5-1983, Art. 51; ATM 4-1-1985, Art. 56; ATM 4-12-2004, Art. 27]

When the development plan includes multifamily dwellings, the total area of the tract covered by the plan shall be at least 10 acres in RAA/AGA/PU/RA/AGA Zoning Districts and 5 acres in RB/AGB/RC/GR Zoning Districts. Without multifamily dwellings the total area must be at least the area required for two conforming building lots under the schedule of requirements in § **240-67A** for all of the eligible Zoning Districts (RAA/AGAA/PU/RA/RB/RC/ACA/AGB). In determining the minimum total area of the tract and the allowed density under § **240-126** for the purpose of planned residential development the following shall not be included:

- A. Dunes, beach, waterbody, bog, swamp, wet meadow or marsh, and all other critical natural resources as defined in MGL C. 131, § 40, otherwise known as resource areas; and
- B. Land otherwise prohibited from residential development by local or state law, regulation, statute or by a prior conservation or easement restriction recorded in the Barnstable County Registry of Deeds.
- C. Any land having grades in excess of 25%.
[Added ATM 4-1-1991, Art. 21]

§ 240-125. Permitted uses and structures.

- A. Planned residential developments may contain one or more of the housing types specified below and defined in Article III of this chapter:
 - (1) One-family detached dwelling;
 - (2) Two-family dwelling;
 - (3) Semidetached dwellings; and
 - (4) Multifamily detached structure with four units or less per structure.
- B. Planned residential development may also contain one of the agricultural or recreational uses specified here and otherwise in accordance with § **240-131**:
 - (1) Agricultural, horticultural or similar uses which conform to MGL c. 61A; and
 - (2) Recreational uses which conform to MGL c. 61B. However, camping areas are specifically excluded as being incompatible with residential dwellings.
 - (3) Community dock.
[Added ASTM 4-5-1993, Art. 12, approved 7-16-1993]
- C. Each lot within said development shall contain a notation on the definitive plan identifying the use of said lot for one of the allowed housing types or uses specified above, and said notation shall not be altered without the approval of the Planning Board and vote to modify said notation as required by MGL, c. 41, § 81W, and MGL, c. 40A, § 9.

§ 240-126. Density limitations.

- A. The maximum number of dwelling units permitted within the perimeter (total area) of a planned residential development shall be determined by the standard density allowed in the district in which the planned residential development is located, as set forth in Article **XIV** but after subtracting that land area excluded under § 140-124. To demonstrate the maximum number of dwelling units, an applicant shall submit a conventional preliminary subdivision plan of land showing a lot layout complying with the minimum lot area, lot frontage and lot width requirements of the Zoning Bylaw with a street layout which complies with the Planning Board's Rules and Regulations Governing the Subdivision of Land. Density may be less where a determination is made by the Planning Board that physical and topographic features of the land would preclude attainment of such density under existing zoning.
[Amended AFTM 11-17-1997, Art. 4, approved 2-27-1998]
- B. When the proposed planned residential development incorporates a commercial, agricultural or recreational use as allowed under § **240-125B**, the allowed density of units calculated under this section may be further reduced according to:
- (1) The intensity and impacts of the incorporated commercial use based on the standards provided by the Massachusetts Statewide Comprehensive Outdoor Recreation Plan or other existing state, federal or local standards.
 - (2) The results of a comparative analysis, submitted as an environmental impact study, between the potential residential development allowed as of right and the proposed mix of residential and agricultural or recreational use.

§ 240-126.1. Density bonus.

[Added AFTM 11-18-1996, Art. 11, approved 4-30-1997]

- A. If a proposed planned residential development incorporates into the proposed open space parcel, lands identified in the Cape Cod Regional Policy Plan or the Falmouth Local Comprehensive Plan/Open Space Element, which are part of the regional or local greenbelt, walking, hiking or biking network, the maximum number of dwelling units permitted within the planned residential development may be increased by 20% over that allowed under § **240-126A** and **B**, up to a maximum of four units.
- B. The density bonus may only be allowed at the sole discretion of the Planning Board as part of the special permit process for a planned residential development.
- (1) To qualify for the density bonus, the Planning Board must find that the open space set aside meets criteria B(1)(a) in addition to at least one of the three criteria listed under B(1)(b), B(1)(c) and B(1)(d) below:
 - (a) The proposed open space parcel abuts existing public open space or protected open space owned by a nonprofit land trust.
 - (b) There are rare, threatened or endangered species in the open space parcel to be provided in the planned residential development or the addition of the proposed open space parcel further protects rare, threatened or endangered species on any adjoining open space parcel, whether public or private.
 - (c) The proposed open space parcel links, via a public access easement or similar instrument, existing or proposed public hiking or walking trails, bikeways, access points to the shoreline, etc.

- (d) The applicant proposes to donate the open space to a land trust or public entity to allow for public access.

- (2) If any one of the above criteria cannot be met, then no density bonus may be incorporated into the planned residential development.

§ 240-127. Minimum lot dimensions and yard requirements.

[Amended ATM 4-5-1983, Art. 52]

- A. Setbacks for lot lines and roadways from the perimeter of the total parcel shall be no less than 25 feet, unless the Planning Board determines greater setbacks are required to fulfill the intent of this bylaw.

[Amended ATM 4-4-1984, Art. 54; ASTM 4-5-1993, Art. 12, approved 7-16-1993]

- B. The minimum lot dimensions and yard requirements permitted under this section are as follows except where a greater area may be required for sanitary reasons, or because of pollutant impacts or other hazards:

Housing Type	Lot Width (feet)	Lot Area (square feet)	Lot Frontage (feet)	Front Yard (feet)	Rear and Side Yard (feet)
1-family detached	75	10,000	50	25	10
2-family and semidetached	125	15,000	75	25	20
Multifamily: Municipal water and sewer available	125	20,000	75	25	20
No sewer available	150	30,000	75	25	20

- C. No lot shall have a minimum average width or depth of less than 75 feet. No lot shall include resource areas, as referred to in § **240-124**, and no lot boundary shall be located closer than 100 feet from the edge of such resource areas or further if necessary to accomplish the purposes of § **240-122**.
- D. The lots for building purposes shall be grouped in a cluster of approximately three to five lots, and within each cluster the lots shall be contiguous.
- E. Lot coverage by structures of up to 40% is allowed in Planned Residential Developments having at least fifty (50) percent open space.
[Added ASTM 4-5-1993, Art. 12, approved 7-16-1993; amended ATM 4-7-2008, Art. 19, approved 5-20-2008]

§ 240-128. Minimum lot area.

[Amended ATM 4-5-1983, Art. 53]

The minimum lot area permitted shall be 10,000 square feet, except where a greater area may be required by the Board of Health for sanitary reasons or because of pollutant impacts or other hazards. No lot shall have a minimum average width or depth of less than 75 feet except that if any lot shall include or be bounded by wetlands, as referred to above, the lot boundary farthest from such wetlands shall be at no point closer than 100 feet from the edge of such wetlands.

§ 240-129. Open spaces.

[Amended ASTM 4-1-1996, Art. 16, approved 4-18-1996]

All the remaining land within the planned residential development not contained in the lots or within the road right-of-way shall be contiguous in parcels of not less than one acre in area. The Planning Board may permit open space parcels that are not contiguous if the intent and purpose of the bylaw is fulfilled. Parcels of less than one acre in area may be permitted for use as a bicycle path or walkway within the subdivision at the discretion of the Planning Board. Any and all structures or uses of open space areas will only be permitted at the discretion of the Planning Board. The total area of open space shall be required according to the following schedule and in accordance with the allowed density of the district as set forth in Article **XIV**:

- A. When proposing single-family units in 30,000 square feet or smaller districts: not less than 40% open space.
- B. When proposing single-family units in 45,000 square feet or greater districts: not less than 50% open space.
- C. When proposing two or more multifamily units in any district: not less than 65% open space.

§ 240-130. Ownership of open spaces.

[Amended ATM 4-5-1983, Art. 54]

- A. All such remaining land set aside according to § **240-129**, shall be permanently conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development tract, for recreational or open space purposes only, and shall not be further subdivided or used for building purposes or recreational activities unless specifically approved by the Planning Board. Alternately such land may be protected for open space use by being conveyed to a recognized nonprofit organization as approved by the Planning Board, the principal purpose of which is the conservation of open space. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded by providing that such land shall be kept in an open or natural state and not be built for commercial or residential use or developed for accessory uses such as parking or roadway. None of the foregoing shall preclude such open area being given to or taken by the Town, should Town Meeting, at some future time vote, but in such case, the Town shall not use any such area for any purpose other than recreational, park or open space.
- B. Not included under this section shall be that area of open space set aside according to § **240-131**.

§ 240-131. Maintenance of agricultural and recreational activities.

If a parcel of land contains a use included under § **240-125B** it may be included in the planned residential development if the following additional standards are met:

- A. The activity or use shall be set aside in a lot of appropriate dimensions necessary to continue the activity or use at a level deemed appropriate in accordance with the objectives of this Article.
- B. The area of the lot in which the activity or use is incorporated may not count towards more than one-third (1/3) of the required open space necessary to meet § **240-126** requirements.

- C. A permanent deed restriction eliminating further development of the property shall be required. Allowance for modification or expansion of the existing use within that deed restriction may be mutually agreed upon by the applicant and the Planning Board.
- D. No access to the agricultural or recreational use shall be allowed over residential lots, either existing or approved, as part of the planned residential development.
- E. Parking requirements for the agricultural or recreational use may be waived by the Planning Board when the Planning Board finds that such waiver is necessary to meet the purposes and objectives of this Article.

§ 240-132. Conformance to other provisions required.

All dwellings and accessory buildings erected under the provisions of this section shall conform to all other provisions of this Article, which shall not be varied except by the Board of Appeals, in the usual manner.

§ 240-133. Major plan review.

Structures containing three or more dwelling units shall comply in all respects with the filing and procedural requirements of Article **XXXVIII** of this chapter.

§ 240-134. Application requirements.

- A. Preliminary plan applications for proposed planned residential developments are encouraged to be made to the Planning Board according to Chapter **305**, the Subdivision Rules and Regulations of Falmouth, Article **III**. In addition to those requirements listed in Article **III** the following shall be required for such preliminary submittals.
 - (1) A statement as to how the proposal conforms to the purposes and objectives of this Article;
 - (2) Information as necessary to justify any proposed modification or reduction of an existing agricultural or recreational use.
- B. Applications for issuance of a special permit and approval of development plans may be submitted after completion of a preliminary plan review. Applications for approval of special permits and definitive subdivision plans shall be submitted and reviewed according to Article **V** of Chapter **305**, the Subdivision Rules and Regulations of the Town of Falmouth. Additional information as may be required in the preliminary plan review or as specified in Subsection **A(1)** and **(2)** above shall also be submitted.

Article XXVI. Affordable Housing Development

[Added STM 10-8-1986, Art. 68]

§ 240-135. Purpose and authority.

In furtherance of the purpose stated in § **240-1** of this chapter, "... to encourage housing for persons of all income levels," and in accordance with MGL C. 40A, § 9, which allows local municipalities to adopt "incentive" ordinances for the creation of affordable housing, and for the purpose of helping

people who have lived and worked in Falmouth and who, because of rising land prices have been unable to obtain suitable housing at a reasonable price and maintaining a stable economy by preventing the outmigration of lower-income groups who provide essential services, the Planning Board, upon issuance of a special permit which allows an increase in density through a partial waiver of Article **XIV** dimensional requirements, and which otherwise conforms to the requirements of Article **XXV**, Planned Residential Development, shall require that all units constructed above "as-of-right" density limitations be sold at prices significantly lower than their market value. As a further incentive for the construction of affordable housing, the Board may, at its discretion, waive certain design standards of improvement requirements provided in Chapter **305**, the Falmouth Subdivision Regulations, or permit a transfer of development rights as per Article **XXXVI**.

§ 240-136. Standards.

- A. Sale price: shall be consistent with § **240-216J**.
[Amended AFTM 11-9-2009, Art. 11, approved 2-5-2010]
- B. Number of affordable units: The number of units allowed above "as-of-right" density will be subject to negotiation and will be determined with due regard to the project approval requirements of this Article. The maximum density increase shall be no more than 25% than that allowed by a standard grid-type subdivision.
- C. Design standards: Specific design standards for construction within the plan shall be made part of the special permit and will be used to ensure conformity and compatibility between units. Other requirements for design shall be as required under Article **XXV** of this chapter, and applicable sections of Chapter **305**, the Falmouth Subdivision Rules and Regulations.
- D. Modification at standards: The standards of Article **XXV** may be modified upon a finding by the Board that such modification creates no adverse impacts on health, safety and welfare, and is found to be in the public interest because of the high quality of design that would result from said modification.
- E. Phasing: A schedule of construction must be submitted providing the timely delivery of the affordable units.
- F. These increases in density shall be prohibited within the Water Resource Protection Districts as shown on the Official Zoning Maps.

§ 240-137. Project approval requirements.

The Planning Board will review all projects and will recommend approval of the special permit if, in the Board's sole discretion:

- A. The Board is satisfied that the applicant has conformed to the design standards of this Article, and will deliver the needed affordable units.
- B. The proposed development site plan is designed in its site allocation proportions, orientation, materials, landscaping and other features as to provide a stable and desirable character complementary and integral with the site's natural features.
- C. The Board makes a finding that such development, density increase, relaxation of zoning standards or transfer of development rights does not have a material, detrimental effect on the character of the neighborhood or the Town and is consistent with the performance standards of Article **XXIII** and sequence.

- D. The Board makes a positive finding as to the adequacy of the environmental impact statement as required by § **305-14** of Chapter **305**, the Falmouth Subdivision Regulations.
- E. The proposed development is consistent with all municipal comprehensive plans and objectives.

§ 240-138. (Reserved)

- [1] *Editor's Note: Former § 240-138, Fees in lieu of units, was repealed AFTM 11-9-2009, Art. 11, approved 2-5-2010.*

§ 240-139. (Reserved)

- [1] *Editor's Note: Former § 240-139, Long-term affordability, was repealed AFTM 11-9-2009, Art. 11, approved 2-5-2010.*

§ 240-140. (Reserved)

- [1] *Editor's Note: Former § 240-140, Major plan review, was repealed AFTM 11-9-2009, Art. 11, approved 2-5-2010.*

§ 240-141. Application requirements.

- A. Preliminary plan applications for proposed planned residential developments are to be made to the Planning Board according to Chapter **305**, Subdivision Rules and Regulations of Falmouth, Article **III**. In addition to those requirements listed in Article **III**, a statement as to how the proposal conforms to the purposes and objectives of this Article shall be required for such preliminary submittals.
- B. Applications for issuance of a special permit and approval of a development plan may be submitted after completion of preliminary plan review. Applications for approval of special permits shall be submitted and reviewed according to Article **V** of Chapter **305**, the Falmouth Subdivision Rules and Regulations. Additional information as may be required in the preliminary plan or as specified above shall also be submitted at the request of the Planning Board.

Article XXVII. Commercial Accommodations

§ 240-142. Cooking and housekeeping facilities.

[Amended STM 11-16-1983, Art. 50; ATM 4-9-2018, Art. 34, approved 7-2-2018]

Commercial accommodations units may contain amenities for private cooking and housekeeping only as the Board of Appeals allows, by special permit, upon the Board's determination that the allowed amenities are customary to guest units and will not change the nature of the use as commercial accommodations.

§ 240-143. Dining facilities.

Except in Business or Light Industrial Districts, dining facilities accessory to a hotel, inn or motel shall be integral with said hotel, inn or motel, unless such dining facilities existed prior to any new hotel, inn or motel, construction on special permit. The total seating capacity of any such new dining facilities or areas shall not exceed twice the total number of guest rooms (units) permitted for the hotel, inn or motel to which such dining facilities are accessory. In Business or Light Industrial Districts these limitations shall not apply.

§ 240-144. Garages.

A garage as accessory to a hotel, subject to the provisions of Article **XXVIII** may be allowed by special permit. This shall be done only where the lot size is such as to make possible no injury to the neighborhood.

§ 240-145. Extended development plan requests.

Any petitioner who applies for a special permit under §§ **240-23A, 240-28A, 240-33A, 240-38A** or **240-51A(1)** may seek an extended development plan provision to the special permit, under the authority of this section. The purpose of this provision is to ensure the long-term development rights of the petitioner. The petitioner may present a phased growth plan culminating in the normal, detailed plan. The special permit, if granted, shall detail the permitted uses, structures, density, time schedule, etc., at the culmination of the development. The petitioner shall have the right to make changes within the approved time schedule without violating the terms of the special permit. No other changes to the conditions of the special permit may be made except at the discretion of the Zoning Board of Appeals.^[1]

[1] *Editor's Note: Original Section 6250, which dealt with the prohibition on the construction of time-sharing units until October 1, 1984, was deleted as its provisions expired October 1, 1984.*

§ 240-146. Time-sharing of existing commercial accommodations.

[Added ATM 4-7-1982, Art. 54; amended ATM 4-2-1984, Art. 55]

The conversion of any commercial accommodation lawfully in existence and operating as a commercial accommodation as of January 1, 1984, whether in whole or in part, for any use known as time-sharing interval ownership, or otherwise, whereby unit owners are entitled by deed or other instrument to occupancy of the units for only specified, recurring periods of less than one year during the course of one year, shall be allowed only upon the issuance of a special permit from the Board of Appeals which shall specifically address said use as time-sharing interval ownership and, only after the Board of Appeals determines that the following conditions have been met:

- A. The lot or lots on which the conversion is proposed equals or exceeds 10,000 square feet per unit to be time-shared in Residential C, General Residence, Business and Light Industrial Zoning Districts; 15,000 square feet per unit to be time-shared in Residential B and Agricultural B Zoning Districts; 20,000 square feet per unit to be time-shared in Public Use, Residential A and Agriculture A Zoning Districts; and 40,000 square feet per unit to be time-shared in Residential AA and Agricultural AA Zoning Districts. Lot size requirements for mixed uses are to be added, i.e., lot requirements for number of time-shared units plus lot requirements for standard commercial accommodations.

§ 240-147. Time-sharing of new commercial accommodations.

[Added ATM 4-2-1984, Art. 55]

The construction and/or conversion of any commercial accommodation granted a special permit after January 1, 1984, whether in whole or in part, for any use known as time-sharing interval ownership or otherwise, whereby unit owners are entitled by deed or other instrument to occupancy of the units for only specified, recurring periods of less than one year during the course of one year, shall be allowed only upon the issuance of a special permit from the Board of Appeals which shall specifically address said use as time-sharing interval ownership and, only after the Board of Appeals determines that the following conditions have been met:

- A. The lot or lots on which the construction and/or conversion is proposed equals or exceeds the minimum square footage required by the unit to be time-shared. Lot size requirements for mixed uses are to be added, i.e., lot requirements for number of time-shared units plus lot requirements for standard commercial accommodation rentals.

Article XXVIII. Automotive Regulations

§ 240-148. Location of automotive services.

No portion of the front or side lines of a public garage, automobile repair shop, greasing station, storage battery service station or gasoline filling station, or any of their appurtenances, or accessory uses, shall hereafter be placed within 50 feet of any residence district. No driveway to such premises shall be in any part within 50 feet of any residence district. No such premises shall have any driveway entrance or exit for motor vehicles within 300 feet of the property used by any public or private school, public library, church, playground or institution for the sick or dependent, or for children under 16 years of age. Every filling station shall hereafter be located not less than 15 feet inside the building line, and no filling shall be done except into cars standing on the property of the filling station.

§ 240-149. Unregistered motor vehicles.

[Amended STM 11-1-1988, Art. 49]

No more than one unregistered car, bus, truck or other registerable motor vehicle shall be permitted ungaraged on any premises in any district, except such as are clearly incidental to the lawful conduct of a nonresidential activity permitted in a Business or Industrial District, or except where such vehicles are in operating condition and regularly used on the premises of a farm, boatyard or comparable activity. In no event shall any unregistered vehicle be stored in the front yard.

Article XXIX. Earthmoving Regulations

[Amended ATM 4-9-1980, Art. 72; ATM 4-5-1983, Art. 55; STM 11-1-1988, Art. 51; STM 10-2-1990, Art. 3]

§ 240-150. Special permit required.

- A. For all land not subject to the wetland (Article **XVII**) and/or floodplain (Article **XVIII**) regulations of this chapter and not in public use, except where such activity is clearly incidental to the development of a site for a building or street or active cranberry bog, no earth shall be moved from any area where the amount of earth moved is 1,000 cubic yards or more within any three-year period unless authorized by a special permit by the Board.
- B. In no case shall the Board issue a special permit for moving a greater amount of earth than the Board deems necessary for the purpose stated in the special permit application.

§ 240-151. Definitions.

BOARD — Shall mean the Zoning Board of Appeals.

EARTH

Shall include but not be limited to soil, sand, clay, gravel and rock.

EARTHMOVING

Shall mean mining, stripping, quarrying, filling, digging or blasting of earth and its transportation on or off the site.

§ 240-152. Procedures; plan information.

- A. Each application for a special permit for earthmoving shall be subject to the procedures as outlined in §§ **240-214**, **240-215**, **240-216**, **240-218**, **240-219** and **240-221** of this chapter as amended from time to time.
- B. Each application for a special permit for earthmoving shall be accompanied by a plan drawn to a twenty-foot or forty-foot scale, showing the premises in sufficient detail to describe the proposed operation and including the following:
 - (1) Property and street lines, names and addresses of applicants, property owners and abutters and, if less than all of the applicant's land is shown, then the entire parcel shall be shown as an inset drawn to the two-hundred-foot scale.
 - (2) Existing topography of the site in two-foot contours showing all man-made features, property lines, vegetative cover and the topography by five-foot contours 100 feet beyond the limits of the property where the excavation is to take place.
 - (3) Proposed topography of the site in two-foot contours.
 - (4) Elevation of the seasonal high groundwater table.
 - (5) Location and manner in which all cover material is to be stored.
 - (6) Estimated quantity of material to be removed and topsoil to be replaced and the method to be used, verified by a registered Massachusetts land surveyor or professional civil engineer.
 - (7) Reclamation plan, showing the following information:
 - (a) Final grades and elevations.
 - (b) Location, types and amounts of vegetation to be planted.
 - (c) Drainage plans, swales and berms as may be applicable.
 - (d) Location of any structures that are to remain.
 - (e) The form of performance guaranty to be used and the name and address of the guarantor.
 - (8) Specific details as to where debris, including but not limited to tree stumps, shall be disposed of.

- (9) A road map shall be provided indicating the routes to be used to transport the earth removed, including any driveways to and from the subject property. Not more than one entrance and one exit from a way, public or private, shall be provided to any area of operation. Access points shall be located in such a way so as to avoid routing of vehicles over developed residential streets.

- (10) A compliance plan for those items found in § **240-154** of this chapter.

§ 240-153. Permit limitations.

No special permit for earthmoving shall be issued for a period of more than three years, although such a special permit may be renewed for additional periods in the same manner. Where the request covers a sizeable parcel, a special permit may be granted for a specific part of the whole, not to exceed five contiguous acres. Approval of additional areas shall be contingent upon the satisfactory completion and reclamation of each previous section except on such abutting portions as the Board deems necessary for continuity of said earthmoving operation. Work of any sort connected with earthmoving shall not be performed on more than one phase area at a time.

§ 240-154. Regulations.

Each special permit shall be subject to, but not limited to, the following restrictions where applicable.

- A. All vegetation and soil suitable for cover material shall be stockpiled or windrowed and retained for future use in the reclamation of the affected area.
- B. For earthmoving operations, border buffer strips in which natural vegetation and soil are undisturbed shall be left for a width of at least 100 feet from the side line of any road open to public use, except for designated access to the earthmoving operation and for a width of at least 200 feet from all abutting property lines unless written consent of the abutting property owner has been received by the Board. Each special permit application shall also be subject to Article **XX** of this chapter as amended from time to time when applicable.
- C. The preservation of trees, bushes and other vegetation and the erecting of a six-foot high landscaped berm or fencing may be required within 200 feet of a property line to muffle objectionable noise or vibration and to act as a visual screen from adjacent properties or ways.
- D. The depth of any excavation shall be limited to a plane that is at least 10 feet above the seasonal high groundwater level for that location, unless the purpose is to create a pond or active cranberry bog.
- E. Provisions shall be maintained during operations for the control of noise, dust and/or erosion caused by wind or water which would affect the adjacent properties or traffic along a roadway.
- F. No processing of loam, and no operation involving earth materials other than the special permitted removal shall take place on the subject premises during the period of time of the special permit unless specifically special permitted by law.
- G. No earth or other materials foreign to the subject premises, including but not limited to boulders, asphalt, cement, road construction debris, demolition debris and tree stumps shall be brought onto and deposited on the subject premises during the period of the special permit except topsoil and living plant material for reclamation use, unless specifically special permitted.

- H. The special permit grantee shall, to the satisfaction of the Board, stake or mark all phase areas where work and restoration have been completed, the phase area currently being worked, and any phase areas for which subsequent work is planned. These boundary markers shall be maintained at all times during the time period of original and any renewed special permits.
- I. Records showing the amount of earth removed shall be provided to the Board on each one-year anniversary date of the granting of the special permit by a registered Massachusetts professional engineer or civil engineer on a certified as-built plan.
- J. No earthmoving or related operations which might disturb Falmouth residents shall take place except between 7:00 a.m. and 5:00 p.m. Monday through Friday and 8:00 a.m. and 12:00 noon on Saturdays and in no case on a legal federal holiday or Sunday. Included among related operations are the starting of engines either for vehicles or machinery, loading and unloading of trucks, and preparations for commencing work which are plainly audible at a distance of 150 feet from the property from which the noise originates.
- K. The subject property shall be kept free of any debris including tree stumps. No debris generated on site shall be buried or otherwise disposed of without the prior written consent of the Board of Health or its agent. In this connection, debris is not included in the definition of "earth" above.
- L. The applicant and property owner agrees by acceptance of the special permit to allow the Board or its representative(s) free access to the site to conduct inspections to determine compliance with the conditions of the special permit at any time without prior notice.
- M. The special permittee shall reimburse the Town of Falmouth for actual costs incurred in evaluation services, in advance, to monitor operations on site should these services become necessary as determined by the Board.
- N. The Board must be notified of any transfer of ownership or legal interest or change in contractual interest in the subject property, including the earthmoving operator deriving income resulting from such work on said property, within 10 days of such transfer or change. Failure to do so will render the special permit null and void.
- O. The reclamation plan of the altered land shall be performed in the following manner:
 - (1) The slope of the finished banks shall not exceed one foot in depth for every three feet of horizontal distance.
 - (2) At least four inches of topsoil shall be placed or remain over the subsoil.
 - (3) The area shall be graded and seeded or planted to prevent erosion and to conceal the scars of earth removal. Seeding, planting, fertilizing and watering shall be done to the best professional standards.
 - (4) The Board may allow a portion of a specific phase to be reclaimed at a later specific date for purposes of starting work in an adjacent phase or for purposes of interior roadways. However, these areas must be shown on the submitted site plans.

§ 240-155. Security.

To ensure compliance with the conditions of the special permit the applicant shall be required to post a cash deposit or surety bond, in form acceptable to the Town Treasurer, in amount sufficient to meet 115% of the estimated cost of the required reclamation work. Within six months of the completion of the operation, or following the expiration or withdrawal of the special permit, the land shall be reclaimed in accordance with the conditions of the special permit. Failure to comply with

this section and the conditions of the special permit shall result in forfeiture of the security to the Town of Falmouth. Said deposit or bond shall not be released until all conditions of the special permit and ground cover vegetation is established in the opinion of the Board.

§ 240-156. Renewal.

[Amended ATM 4-1-1991, Art. 23]

Any special permit issued may be renewed thereafter with a public hearing legally advertised in accordance with § **240-152**, Procedures, as noted above. However, applications for renewal must be made 90 days or more before expiration of the current valid special permit expires. Renewal, if granted, shall date from the day the current special permit expires. Renewal shall not be granted if work and restoration under the current special permit fails any of the performance requirements set by the Board or its agent.

§ 240-157. Denial of permit.

No special permit for earthmoving shall be issued if:

- A. Such removal will endanger public health or safety or constitute a nuisance or shall result in detriment to the normal use of adjacent property by reason of noise, dust or vibration.
- B. The work extends within 100 feet of a way open to public use, whether public or private.
- C. There is insufficient vegetative barrier to remain on the property upon completion of the project to prevent view of this project from a way.
- D. Any work is located within a Water Resource Protection District as established by § 240-71.1D.
[Added AFTM 11-6-1995, Art. 4, approved 12-26-1995]

Article XXX. Accessory and Temporary Uses

§ 240-158. Accessory scientific uses.

The Board of Appeals may grant a special permit for a use accessory to scientific research, scientific development or related production activity where such production is not for sale, whether or not on the same parcel as that where such activity is allowed by right, provided that it shall not involve genetic engineering and that the applicant for a building or occupancy permit demonstrates to the Building Commissioner and the Board of Health on an annual basis that all federal, state, Town of Falmouth licenses, permits and standards for the handling, use, storage and disposal of any regulated materials have been obtained or met. Said research shall not produce toxic and/or hazardous wastes as a by-product. Such production shall not utilize in excess of 25% of the interior floor space, or 2,500 square feet, whichever is lesser, shall not produce any noxious odors or excessive noise detectable on abutting properties or in any other way substantially derogate from the public good.

§ 240-159. Bath houses on beach or shore lots.

A special permit may be granted for bath houses on beach or shore lots of small lot area not conforming with Article **XIV**, but no bath house erected on any such lot shall be permitted to be used as a habitation and there shall be a side yard not less than five feet in clear width between the side of any house erected thereon and the side line of said lot, said side yards to be at all points

clear from the front to the rear line of said house.

§ 240-160. Temporary and conditional structures and uses.

- A. Temporary and conditional structures and uses that do not conform to the regulations herein prescribed may be allowed by special permit, provided that no special permit shall be for more than a one-year period and further provided that no permit shall be renewed until all abutters have been notified and public notice given in the manner provided in MGL C. 40A.
- B. A temporary permit may be issued by the Building Commissioner for the use of a container for storage and/or a trailer as a field office at a construction site during the period when construction is actually underway, subject to approval of the Board of Health. Such trailer shall not be used for real estate sales purposes.
[Amended ATM 4-12-2004, Art. 26]
- C. Subject to the rules and regulations of the Board of Health, the owner or occupier of a residence which has been destroyed by fire or other natural holocaust may place a mobile home on the site of such residence and reside in such home for a period not to exceed 12 months while the residence is being rebuilt.
- D. The Building Commissioner may issue permits for tents or similar temporary structures to be used for special events, not to exceed three days. A maximum of three temporary permits per calendar year may be issued for any business event, excluding social events.
[Added ATM 10-2-1990, Art. 13, approved 1-9-1991]

§ 240-161. Accessory use limitation.

Accessory uses except uses for scientific research, allowed under § **240-158**, shall be on the same lot with the building of the owner or lessee and shall be such as to not alter the character of the premises on which they are located nor impair the neighborhood.

§ 240-162. Home occupations.

[Added ATM 4-9-1980, Art. 72]

- A. A home occupation is allowed provided that not more than 30% of the gross floor area of the dwelling unit shall be used in the conduct of any or all home occupations. The area devoted to home occupations may be allocated between the dwelling unit and accessory building, but in no case shall the total floor area of the home occupation exceed 30% of the gross floor area of the dwelling unit.
[Amended STM 10-2-1990, Art. 7, approved 1-9-1991]
- B. There shall be no change in the outside appearance of the premises, nor any other visible evidence of such home occupations other than one nonilluminated sign, not exceeding two square feet in area. All such home occupations conducted therein must be inscribed or displayed, if at all, on the one sign. There shall be no exterior storage of material or equipment. No trading in merchandise may be conducted except for products made on the premises or of other parts or other items customarily maintained in connection with, and incidental to, such merchandise.
- C. No equipment or process shall be used in such home occupations which creates noise, vibration, flare, fumes, odors or electrical interferences, detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates

visual or audible interference in any radio or television receivers off the premises.

- D. No traffic shall be generated by such home occupations in greater volume than would normally be expected in that residential neighborhood, nor which jeopardizes the traffic safety of that neighborhood. This use may increase parking by no more than two additional vehicles at a time, and any need for parking generated by the conduct of such home occupations shall be met off the street and other than in a required front yard or within five feet of any side or rear property line.
- E. No persons, other than family residents, may be regularly employed on the premises in connection with such home occupations.
- F. A special permit shall be required for certain home occupations as follows:
 - (1) Any home occupation which otherwise meets the applicable provisions of § **240-162**, except that it utilizes a lot which does not conform to the minimum lot dimensional requirements, shall require a special permit from the Board of Appeals.
 - (2) The use of any structure, which is nonconforming to the minimum yard requirements, or where one person, but no more than person, who is not a family resident member, is to be regularly employed on the premises in connection with the home occupation, shall require a special permit from the Board of Appeals.
 - (3) Any home occupation, which satisfies the definition of a home-based service business, shall require a special permit from the Board of Appeals. In acting on such special permit, the Board of Appeals may approve an application that demonstrates compliance with all applicable requirements of § **240-162** A through F(2) above and the following criteria:
 - (a) The Board of Appeals may approve up to four company vehicles parked overnight on the premises with the following conditions:
 - [1] All company vehicles must be kept on a driveway, in a garage or within a screened area in a side or rear yard that effectively screens the vehicle from view.
 - [2] No more than two company vehicles may be kept on any driveway area. Unless specifically approved by the Board of Appeals no ungaraged company vehicle shall be parked overnight within five feet of any lot line or within 15 feet of any off-premises dwelling in existence as of the effective date of this bylaw.
 - [3] Company vehicles shall be limited to the following types: passenger car, minivan, van, sport utility vehicle (SUV), trailers over 18 feet in bed length, pick-up truck or other truck not to exceed 13,000 pounds GVW except as may permitted by the Board of Appeals under § **240-38G(4)(b)**.
 - (b) The maximum amount of exterior storage shall not exceed more than 10% of the lot area, with the following conditions:
 - [1] All exterior storage, including trailers under 18 feet in bed length, shall be completely screened from view.
 - [2] Any exterior storage shall be no closer than 30 feet to any off-premise dwelling in existence as of the effective date of this bylaw.
 - [3] Unless specifically approved by the Board of Appeals no such exterior storage shall occur within five feet of any lot line.
 - [4] No exterior storage shall be allowed within any front yard area as defined in this zoning bylaw.

- [5] Materials that require use of a motorized device to off-load or load shall not be stored on the premises of a home-based service business.
- (c) There shall be no more than two employees, who are not family members, assigned to work on the premises of the home-based service business, under the following conditions.
 - [1] Every such nonfamily employee is engaged in work within the dwelling or in an accessory structure or screened in area subject to the provisions of § **240-110**.
 - [2] No work other than moving goods, materials, or equipment shall occur outside a structure on the premises.
 - [3] The business may employ other individuals to perform work at off-site locations and only limited visits of an occasional nature to the premises by such employees shall not constitute employment on the premises for the purposes of § **240-162E** of this bylaw. However, limited employee visits to said business to pick up work assignments and/or supplies may occur, provided no such visits shall occur more than twice a day, exceed 30 minutes and only during regular business hours.
- (d) Hours of operation, equipment management requirements, storage of equipment, and other conditions necessary for the issuance of the special permit shall be as follows:
 - [1] Except for emergency situations, regular business hours for the home-based service business, as well as any loading or off-loading of equipment or supplies, shall be limited to between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday. No vehicles used for delivery or pick-up purposes shall exceed 13,000 pounds of gross vehicle weight.
 - [2] There shall be no running or servicing of motorized equipment used in connection with the home-base service business on the premises of said business or within the layout of any street or way on which the business premises has frontage, except for normal business activities in connection with providing services to a customer of the business on said street or way. This provision specifically excludes the operation of licensed company vehicles. Company vehicles shall be serviced off-site in an approved vehicle service facility. Motorized equipment, such as lawnmowers and so-called "bobcat" excavation machines, may be loaded and off-loaded only between the hours of 7:00 a.m. and 7:00 p.m. All such loading and off-loading shall take place only within a driveway, garage, or equipment storage areas on the business premises and not within any street or way, except for normal business activities in connection with providing services to a customer of the business. Any motorized equipment registered for on-street travel, including but not limited to so called "bucket trucks" or similar vehicle shall not be considered equipment for the purposes of this bylaw.
 - [3] There shall be no stockpiling or other storage of landscape media, including but not limited to the following: topsoil, sand or other fill material, crushed stone, gravel, seashells, seaweed, mulch, or wood chips for resale, by any home-based service business.
- (e) Additional special permit criteria. In addition to the above and the criteria found in § **240-216**, the Board of Appeals shall find the following criteria have been satisfied:
 - [1] The ways providing access are adequate and can safely accommodate the traffic of the HBSB to and from the site.
 - [2] The Board of Appeals shall limit the number of employees or subcontractors who

routinely visit the site for the purposes of Subsection **F(3)(c)[3]** above taking into consideration neighborhood characteristics and the nature of the HBSB.

- [3] The Board of Appeals shall make a finding that the hazardous materials storage requirements of the water resource protection district have been satisfied.
- [4] The Board of Appeals shall consider the cumulative effects of allowing more than one HBSB located in any given neighborhood taking into account the density of the neighborhood, the distance separating each HBSB, the nature of each HBSB and the effects on abutters, if any.
- [5] For other special permits that may be applied for, including applications under § **240-38G(4)(b)**, the Board of Appeals shall consider the combined effects associated with each application.

Article XXXI. Agricultural Regulations

§ 240-163. Conformity to rules and regulations; keeping of livestock.

All agricultural activities shall conform to the rules, regulations and determinations of the Board of Health and other bylaws of the Town of Falmouth. Livestock must be properly fenced and adequate shelter provided.

§ 240-163.1. Agricultural and farm-related businesses.

[Added AFTM 11-15-1999, Art. 2, approved 3-22-2000]

- A. Purpose: to provide local farms an opportunity to engage in farm related businesses such as agricultural tourism, farm vacations, active and passive recreational opportunities and similar activities in order to promote agriculture, the preservation of open space and the continuation of farming as a viable component of the local economy.
- B. Definitions.

FARM PARCEL

A lot of land containing at least five acres devoted exclusively to and currently maintaining one or more agricultural uses defined under c. 61A.

FARM-RELATED BUSINESS

A business operated on a farm parcel, related or supportive of agricultural activities such as agricultural tourism, farm vacations, active and passive recreational opportunities, blacksmithing, farm implement repairs, sale of small or light garden supplies, equipment and tools customary and incidental to the sale of garden plants and nursery stock.

- C. Use regulations. In order to achieve the purposes of this article, the following uses are allowed as a matter of right on farm parcels:
 - (1) Farmer's market for the retail sale of locally grown products, including processed products of the farm parcel such as pies or jams, etc.
 - (2) Harvest festival or similar social events provided that such use shall not exceed two days in any calendar week. Recreation including picnic facilities, fee-fishing ponds, cross-

country skiing, horseback riding trails, canoe rentals. For any event not associated with an exempt agricultural activity a site plan of proposed parking must be reviewed by the Planning Board.

- (3) Craft sales associated with locally grown products that are produced on the farm parcel.
- (4) Farm implement repair, sale of small or light garden supplies equipment and tools customary and incidental to the sale of garden plants and nursery stock, subject to the following:
 - (a) No more than 40% of the farm parcel up to five acres shall be devoted to such use including areas used for structures, parking, storage or display. In no case shall the remaining land devoted exclusively to agricultural use be less than five acres.
 - (b) The owner or occupant of the farm must be engaged in the farm-related business.
 - (c) The use must be conducted within a completely enclosed building or screened from view by landscaping or fencing.
 - (d) A side and rear yard setback of 100 feet must be maintained from a single-family residence lot or district.

D. Uses which may be allowed by special permit through the Board of Appeals:

- (1) Veterinary clinics or animal hospitals.

Article XXXII. Public or Nonprofit Housing for the Elderly

[Added ATM 4-8-1981, Art. 54; amended ATM 4-6-1992, Art. 23; AFTM 11-17-2014, Art. 3, approved 2-19-2015]

§ 240-164. Density regulations.

The density for public or nonprofit housing shall be no greater than six units per acre. If any septic system serving such housing falls within a Water Resource Protection District the density shall be no greater than that allowed for single-family detached dwellings in that district. Public or nonprofit housing which falls within a Water Resource Protection District, served by the municipal sewer system, shall have a density no greater than six units per acre.

Article XXXIII. Recreation Centers

[Added ATM 4-6-1992, Art. 26]

§ 240-165. Limitations.

Billiard rooms and similar commercial amusement places with automated amusement devices may be allowed by special permit issued by the Zoning Board of Appeals only under the following limitations:

- A. The activities proposed must be contained in a principal structure on the site.
- B. No portion of the structure to be utilized may be within 200 feet of a single-family residential dwelling.

- C. No alcohol may be sold or consumed within the recreational activity area defined by the Zoning Board of Appeals on the approved plans.
- D. The special permit shall have as a condition that no one under the age of 16 may utilize the facilities during school hours, unless accompanied by a parent.

Article XXXIV. Wind Energy Systems

[Added ATM 4-8-2013, Art. 7, approved 7-9-2013^[1]]

[1] *Editor's Note: This article also repealed former Art. XXXIV, Windmills, added STM 9-10-1981, Art. 50.*

§ 240-166. Purpose; special permits; prohibitions; definitions; application requirements; review; decision; conditions.

- A. Purpose: The purposes of this bylaw are: to accommodate wind energy systems as accessory land uses to supplement the power used by residents, municipal government bodies and businesses; and to provide standards for the placement, design, construction, monitoring, modification and removal of wind energy systems through a special permitting process based on the procedures, provisions and requirements established herein.
- B. Wind energy systems allowed with limitations. Any provisions or requirements of this chapter to the contrary notwithstanding, wind energy system as defined shall only be constructed or modified through a special permit issued by the Planning Board as the Special Permit Granting Authority (SPGA), (NOTE: See § 3 of Chapter 40A GL for agricultural, religious and educational exemptions.) subject to the following limitations:
 - (1) Small wind energy systems (SWES) may be permitted in Single Residence A and AA, Agricultural A and AA, Business 2, Public Use, Light Industrial Zoning Districts, as further specified herein.
 - (2) Large wind energy systems (LWES) may be permitted in Public Use or Light Industrial Zoning Districts, as further specified herein.
 - (3) WES may only be permitted when accessory to a principal land use.
- C. Wind energy systems prohibited. Any provisions or requirements of this chapter to the contrary notwithstanding, no wind energy system as defined shall be constructed, or modified and no special permit shall issue for any wind energy system under this bylaw:
 - (1) That has a rated capacity greater than 250 kilowatts in any zoning district.
 - (2) That is not an accessory land use, as defined herein.
 - (3) Where the primary use of the facility is electrical generation to be sold to the power grid or accounted for through net metering.
- D. Exceptions. Any provisions or requirements of this chapter to the contrary notwithstanding:
 - (1) Any WES lawfully in existence as of the effective date of this article shall be considered conforming and may apply for a special permit under this article to alter, modify, re-locate, or otherwise make improvements consistent with Article **XXXIV** (34).
- E. Definitions. Section **240-13** notwithstanding, the following terms shall have the following meanings:

ACCESSORY LAND USE

For the purposes of this article shall mean that the wind energy system (WES) shall be incidental to and supplement the power needs of the principal use(s) located on the same lot, or on land held in common ownership as part of a planned residential development. [NOTE: See Article **XXV** (25) of the Zoning Bylaw.]

AMBIENT SOUND LEVEL

The background A-weighted decibel average that is exceeded 90% of the time (L^{90}) measured during operational hours.

BROADBAND SOUND

Noise that does not contain a distinguishable note or tone, and is comprised of multiple (low, mid and high) frequency components.

FLICKER

The moving shadow created by the sun shining on the rotation blades of the wind turbine.

LARGE WIND ENERGY SYSTEM (LWES)

A wind energy system with a rated capacity greater than 60 kilowatts but no more than 250 kilowatts.

METEOROLOGICAL (MET) TOWER

A temporary tower equipped with devices to measure wind speed and direction, used to determine how much wind power a site can be expected to generate.

NET METERING

The difference between the electricity supplied over the electric distribution system and the electricity generated by the wind energy system which is fed back into the electric distribution over a given billing period.

POWER GRID

The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

PURE TONE SOUND

A condition produced when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by three decibels or more.

PUBLIC OUTREACH AREA

Those properties located in the area between 300 to 1,500 feet of the property line.

RATED CAPACITY

The maximum rated output of electric power production equipment, as certified by the manufacturer. The rated capacity is the maximum power produced at optimum wind speed.

SMALL WIND ENERGY SYSTEM (SWES)

A wind energy system with a rated capacity equal to or less than 60 kilowatts.

SYSTEM HEIGHT

The vertical distance from ground level (natural grade) to the tip of the wind generator blade at its highest point.

WIND ENERGY SYSTEM (WES)

All equipment, machinery, and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage equipment,

substations, transformers, service and access roads, and one or more wind turbines.

WIND TURBINE

A single device that converts wind energy to rotational energy that drives an electrical generator, typically consisting of a rotor and blade assembly, nacelle body and tower.

- F. Application requirements. In addition to the requirements found in §§ **300-1** through **300-15** (NOTE: Planning Board rules and regulations governing the issuance of special permits, Code of Falmouth.), applications for a special permit to determine compliance under this article shall include all such material that the SPGA may reasonably require, and must include the following, unless waived by the SPGA:
- (1) Mandatory preapplication meeting: All applications shall be reviewed by the Planning Department prior to submittal to the SPGA.
 - (a) The applicant must provide a copy of the application for interconnection with the electricity utility provider, if the WES is proposed to be connected to the power grid.
 - (b) Proof of liability insurance must be provided for an amount and duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility, in the form of a preliminary commitment from a recognized carrier.
 - (c) The applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for construction and use of the proposed facility.
 - [1] Documentation shall include proof of control over setback areas and access roads, if necessary.
 - (2) Names and addresses of property owners within the public outreach area as defined.
 - (3) Site plan details.
 - (a) Property lines and physical dimensions of the subject property.
 - (b) All other parcels and occupied structures within the public outreach area.
 - (c) Location, dimensions and types of existing structures on the site property.
 - (d) Location of the proposed wind turbine foundation(s), guy anchors, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, and exterior lighting.
 - (e) Distance between foundation and property lines.
 - (f) All overhead utility wires.
 - (g) Extent of clearing necessary for installation and any areas to be revegetated.
 - (4) Engineering details.
 - (a) Only freestanding monotube tower designs are permitted for LWES.
 - (b) Wind energy system specifications, including manufacturer and model, rotor diameter, tower height, and tower type.
 - [1] Certifications, if any, of the WES shall be noted; for example: Small Wind Certification Council, American Wind Energy Association, National Renewable Energy Laboratory, California Energy Commission, or the New York State Energy Research and Development Authority.

- (c) For large WES MET Tower data 12 months or equivalent available data.
 - (d) Electrical plans and components, in sufficient detail, and stamped by an electrical engineer licensed in the Commonwealth of Massachusetts, to allow for a determination that the manner of installation conforms to all applicable codes.
 - (e) Evidence of compliance or nonapplicability with Federal Aviation Administration requirements.
- (5) Operating details.
- (a) The applicant shall submit an operations and maintenance plan, to remain on file with the SPGA, for maintenance of access roads and stormwater controls, if any, as well as general procedures for operational maintenance of the WES. The O&M Plan must address the following:
 - [1] Fully identify the parties responsible for owning and operating the turbine.
 - [2] Normal maintenance schedule and procedures.
 - [3] Methods for measuring sound, flicker and other potential impacts throughout normal operations.
 - [4] Emergency contacts and procedures.
 - (b) Sound impact analysis: The applicant shall submit manufacturer's documentation of sound impacts of the wind turbine(s) under various wind conditions, represented by a chart or map indicating the expected decibel levels at given distances from the wind turbine, including along the property lines.
 - [1] The sound analysis shall include measurements of ambient sound levels under typical daytime and nighttime conditions.
 - [2] The applicant shall specify the conditions under which ambient sound levels are measured, as well as the frequency and duration of these measurements.
 - [3] The SPGA reserves the right to request measurement and/or modeling to the degree necessary to determine the potential sound impacts of a proposed WES, and to employ the services of their own acoustical expert at the expense of the applicant.
 - [4] Sound modeling shall include analysis of, but not limited to, the following items: intermittent sound, sound power; spreading loss; atmospheric attenuation; barriers; ground attenuation and topography; meteorology, including seasonal variation; and wind direction, speeds and shear.
 - (c) Flicker analysis: The applicant shall submit an evaluation of the flicker effects of the wind turbine(s) as proposed to be sited on the parcel.
 - [1] Seasonal differences in time and duration must be provided.
 - [2] A plan delineating all impacted areas must be provided, with mitigation.
- G. Procedure for review. In addition to the requirements found in §§ **300-1** through **300-8**, applications for a special permit under this article shall be subject to the following procedural requirements:
- (1) With the exception of those property owners identified as parties-in-interest, the SPGA

shall, by regular mail, alert property owners within the public outreach area of the time, place and date of the required public hearing for any WES. The purpose of this outreach effort is to broaden the base of information gathering beyond that typically required of other special permit applications, while not conferring party-in-interest status beyond that defined by MGL c. 40A, § 11.

H. Criteria for review. Applications for WES shall be subject to the following performance requirements:

- (1) System height: The maximum height of a WES shall be determined by the SPGA based on the operational characteristics of the WES, but in no case shall the maximum permitted height exceed the setback requirements.
- (2) Setbacks:
 - (a) Safety setback: The setback from property lines shall be no less than the system height plus 10% to mitigate risk from ice throw or mechanical failure.
 - (b) Sound setback: shall be determined by the SPGA from Sound Impact Analysis described above in order to not exceed increases in broadband sound levels by more than six A-weighted decibels or "pure tone" sound levels by more than three A-weighted decibels over ambient sound levels at the property line.
 - [1] The applicant shall have the burden of proving that the sound generated by the proposed WES will not have a significant adverse impact on adjacent land uses.
 - [2] An analysis prepared by a qualified acoustical expert shall be presented to demonstrate compliance with the noise setback.
 - (c) A larger setback may be required by the SPGA in order to fulfill the intent of the safety or sound setback based on manufacturer or industry standards for the type of WES under review.
- (3) Clearing: The extent of clearing shall be limited to that which is necessary for access, construction, operation and maintenance of the WES.
 - (a) Extensive clearing shall require runoff control and stormwater management.
 - (b) Temporary construction staging areas shall be revegetated.
- (4) Design standards.
 - (a) Color and finish: All components of the WES shall be painted a neutral, nonreflective color.
 - (b) Lighting: Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting of appurtenant structures shall be limited to that required for safety, security and operational purposes, and shall be shielded From abutting properties to the extent possible.
 - (c) A WES shall not display any permanent or temporary signs, writing, symbols, logos or any graphic representation except the following:
 - [1] Signs necessary to identify the owner, provide a twenty-four-hour emergency contact phone number, and warn of any danger.
 - [2] Educational signs providing information about the facility, and the benefits of renewable energy.

- [3] Reasonable identification of the manufacturer or operator of the WES.
- (d) Utility connections shall be installed underground. Electrical transformers for utility interconnection may be above ground, if required by the utility provider.
- (5) Safety and environmental standards.
 - (a) Emergency services: The applicant shall provide a copy of the project approval and site plan to the Falmouth Police Dept. and Falmouth Fire and Rescue Dept.
 - [1] The applicant cooperate with the FFRD in developing an emergency response plan, which must be approved by the SPGA
 - [2] The emergency response plan shall account for any hazardous materials located at the property necessary for the operation of the WES.
 - (b) Access:
 - [1] All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 - [2] The tower shall be designed and constructed so as to not provide stop bolts or a ladder readily accessible to public for a minimum height of 10 feet above the ground.
 - (c) Shadow flicker: WES shall be sited in a manner that minimizes flicker impacts.
 - [1] The applicant must demonstrate that flicker will not occur more than 30 minutes per day, and will not exceed 10 total hours per year over the property line.
 - [2] The applicant has the burden of proving that flicker will not have a significant adverse impact on adjacent land uses either through siting or mitigation.
- I. Decision. Applications under this article shall only be approved by the SPGA upon its finding that the criteria for review above have been satisfied together with the standards found under **§ 240-216**.
- J. Categorical denial. No special permit shall issue for any application not able to demonstrate compliance with the sound or safety setbacks.
- K. Standard conditions. The following shall be conditions of any special permit issued under this article:
 - (1) Facility condition: The applicant shall maintain the WES in good condition.
 - (a) Maintenance shall include, but not be limited to: painting, structural repairs, and integrity of security measures.
 - (b) Site access shall be maintained.
 - (c) The WES owner shall be responsible for the cost of maintaining the WES and any access roadways or driveways, and the cost of repairing any damage occurring as a result of construction and operation.
 - (2) The Annual inspections: Any LWES shall be subject to an annual inspection, with a report submitted to the SPGA and Building Commissioner.
 - (a) The inspection shall include an evaluation of all mechanical and structural components, especially safety, performed by professional engineers with the proper

registrations (i.e., structural, electrical, mechanical, etc.).

- (3) Modifications: Modifications to a WES made after issuance of the special permit shall require approval by the SPGA as provided in this article.
- (4) Enforcement and penalties Building Commissioner shall be responsible for enforcement of the provisions of this section pursuant to Article **XXXVII** (37) of the Zoning Bylaw.
 - (a) Failure of the owner of any WES to comply with operational standards, mitigation measures or annual inspection requirements shall be considered a violation of the Zoning Bylaw.
 - (b) The Building Commissioner shall, where such permit so authorizes and after proper notification, have the right to enter any premises for the purposes of inspecting any building or structure, at a reasonable hour and at such times as may be reasonably necessary to enforce this bylaw.
- (5) Abandonment or decommissioning.
 - (a) Removal requirements: Any WES which has reached the end of its useful life or has been abandoned shall be removed. For a scheduled decommissioning, the owner shall notify the SPGA by certified mail of the proposed date of discontinued operations and plans for removal. The owner shall physically remove the WES no more than 150 days after the date of discontinued operations. Decommissioning shall consist of:
 - [1] Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
 - [2] Disposal of all solid and hazardous waste in accordance with local and state regulations.
 - [3] Stabilization or revegetation of the site as necessary to minimize erosion. The SPGA may allow the owner to leave below-grade foundations in place in order to minimize disruption.
 - [4] Abandonment: Absent notice of a proposed date of decommissioning, the WES shall be considered abandoned when the facility fails to operate for more than 12 consecutive months.
 - [5] Prior to declaring the WES to be abandoned, the SPGA shall notify the owner by certified mail that corrective action must be taken. The owner shall have 30 days to respond and provide a schedule for corrective action.
- (6) Financial surety: The SPGA shall require the applicant for any LWES to provide surety, either as a bond or escrow account, to cover the cost of removal in the event the Town must remove the WES together with a right-of-entry onto the property in the event of default. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall be adjusted for inflation.
- (7) Public inquiries/complaints: The applicant shall identify a responsible person and contact phone number in the event of public inquiries or complaints, for as long as the WES is in place. Complaints that cannot be resolved by the parties shall be forwarded to the Building Commissioner, with a copy to the SPGA, by the responsible person identified above.

Article XXXV. Subdivision Phasing

[Added ATM 10-17-1984, Art. 44]

§ 240-167. Applicability.

[Amended ATM 4-7-1986, Art. 67]

The following regulation shall apply to all divisions of land into more than 20 lots in any twelve-month period. Subdivisions created by way of a special permit for multifamily open space developments shall also be subject to these regulations. This shall apply to all division of land within the Town of Falmouth even if approval under the Subdivision Control Law (MGL C. 41) is not required.

§ 240-168. Compliance with Subdivision Regulations.

[Amended ATM 4-7-1986, Art. 67]

Whenever a new lot or lots are formed from a part of any other lot or lots, the assembly or division shall not impair any of the requirements of this Article and shall be in accordance with Chapter **305**, the Subdivision Regulations of the Town of Falmouth.

§ 240-169. Purpose.

[Added ATM 4-7-1986, Art. 67]

The purpose of this Article is to encourage a constant pace of residential development, provide long-term support to the local building industry, stabilize property values and facilitate adequate provision of public services to individual developments and the Town in general.

§ 240-170. Land division limitations.

[Amended ATM 4-7-1986, Art. 67]

The division of a parcel or combined adjacent parcels of land in any zoning district or districts shall not exceed 20 lots in any twelve-month period if two or more of the following apply:

- A. The properties were in the same ownership as of September 10, 1984;
- B. The properties were contiguous as of September 10, 1984;
- C. The properties to be divided will create lots that have frontage on the same existing roads; and
- D. The properties to be divided will create lots with common access roads.

§ 240-171. Exceptions.

- A. Division of land in excess of 20 lots as defined in § **240-170** above may be allowed only if one of the following requirements are met:
 - (1) The owner of said land covenants with the Planning Board that he will not build upon more than 20 lots in any twelve-month period. Said twelve-month period shall commence on the date of endorsement by the Planning Board. The covenant shall identify the lots that may be built upon in each twelve-month period. The covenant shall be recorded with all other pertinent documents with the definitive plan. In the case of a multifamily open space residential development, the covenant shall identify as buildable lots within each twelve-month period the number of lots that will accommodate no more than 20 dwelling units.

[Amended ATM 4-7-1986, Art. 67]

- (2) The owner of said land applies for and receives a special permit from the Planning Board in accordance with MGL, C. 40A, §§ 9 and 11, to divide greater than 20 lots in any twelve-month period. The Planning Board shall grant a special permit for such division only if the Board determines that the probable benefits to the Town outweigh the probable adverse effects resulting from granting such permit.
- B. In reviewing a special permit application under this section, the Planning Board shall consider the impact upon schools, other public facilities, traffic and pedestrian travel, availability and quality preservation of drinking water, adequacy of recreational facilities, open spaces and agricultural resources, preservation of unique natural features, housing for senior citizens and people of low and moderate income as well as Master Plan or growth management plans prepared by the Planning Board in accordance with MGL, C. 41, § 81D.
- C. All the provisions of MGL, C. 40A, §§ 9 and 11, and § **240-216** of this chapter, relating to the granting and denial of special permits shall, so far as apt, be applicable to a special permit application under Subsection **A(2)**.

§ 240-172. Zoning change protection.

Lots whose development have been subject to the covenant as provided for in § **240-171A(1)** of this Article shall be governed by the applicable provisions of this chapter in effect at the time of the plan or plan's endorsement by the Planning Board and for a period equivalent to that provided for by MGL, C. 40A, § 6, except, however, the statutory protection afforded by MGL, C. 40A, § 6, shall not commence until the lot or lots qualify for construction according to the terms of the covenant noted in § **240-171A(1)** of this Article.

§ 240-173. Exemptions.

The provisions of this Article (§§ **240-167** through **240-173**) shall not apply to, nor limit in any way, the granting of building or occupancy permits required for:

- A. Enlargement, restoration or reconstruction of dwellings existing on lots as of the date of passage of this Article.
- B. Permits protected under § **240-4** of this chapter.
[Amended ATM 4-7-1986, Art. 67]

Article XXXVI. Transfer of Development Rights

[Added ATM 4-1-1985, Art. 60]

§ 240-174. Eligibility.

[Amended STM 10-14-1987, Art. 50; AFTM 11-18-1996, Art. 16, approved 4-30-1997]

Any lot or lots shown on a plan endorsed by the Planning Board or duly recorded at the Registry of Deeds as of April 1, 1995, shall be eligible to apply for a special permit to transfer a portion or all of the development rights on said lot or lots (hereinafter called "donor lots") to a different location and different zoning district (hereinafter called "receiving district") to be included as part of a subdivision requiring approval under MGL C. 41, the Subdivision Control Law, provided that the following requirements are met:

- A. Each donor lot or portion thereof complies, in all respects, with the minimum requirements for

obtaining a building permit by right or if in the opinion of the Planning Board, is potentially subdividable lot of land given minimum zoning requirements, subdivision regulations and other pertinent regulations;

- B. The locus of the receiving district contains at least five acres in an RA, RB, RC, AGA or AGB zone and 10 acres if an AGAA or RAA zone; and two acres in a Business or LIA zone.
- C. The owner or owners of the donor lot(s) record at the Registry of Deeds a covenant running in favor of the Town of Falmouth, prohibiting the construction or placement of any structure on said donor lot(s).
- D. Town-owned land, approved for this purpose by a two-thirds (2/3) vote of Town Meeting shall be available as a donor or receiving district.

§ 240-175. Donor districts.

Donor districts shall consist of:

- A. Any existing building lot shown on a plan recorded at the Registry of Deeds, or any contiguous parcel of land of at least five acres which qualifies for or is currently assessed by the Town of Falmouth or the Commonwealth of Massachusetts under the provisions of MGL C. 61A; or [Amended AFTM 11-18-1996, Art. 16, approved 4-30-1997]
- B. All land within Water Resource Protection Districts as established by § **240-72.1D** of the Zoning Bylaw and all land within Coastal Pond Overlay Districts as established by § 240-133B of the Zoning Bylaw.
[Amended STM 10-14-1987, Art. 50; AFTM 11-6-1995, Art. 3, approved 12-26-1995]

§ 240-176. Receiving districts.

- A. Receiving districts shall consist of all land currently zoned B3, B2, LIA, RC, RB, AGB, RA, AGA, RAA, and AGAA, except that receiving districts shall not be considered to include any land within a mapped Water Resource Protection District as defined, any land within a mapped water recharge area as referred to in § **240-113B** of this chapter, or any land referred to in § **240-175** of this chapter.
[Amended STM 10-14-1987, Art. 50]
- B. Receiving districts shall be eligible to "accept" donor lots according to the schedule of § **240-177**, provided that the locus of the receiving district is the subject of a subdivision plan requiring Planning Board approval under the requirements of MGL C. 41 and a special permit under the requirements of Article **XXV** of this chapter, except that § **240-124** shall not apply to plans filed under this Article. No transfer of development rights shall be approved by the Planning Board into a receiving district locus not requiring subdivision approval.
- C. In transferring development rights into a receiving district, the Planning Board may allow the minimum frontage, width and area standards of the total subdivision, including transferable lot rights to be reduced according to the criteria specified in § **240-123**.

§ 240-177. Credits.

- A. Lots within donor districts shall be eligible to transfer their development rights to receiving districts only in compliance with the following schedule:

Donor Districts	Receiving Districts	Assignable Credit
RC	RB, AGB	1.4
RC	RA, AGA	1.3
RC	RAA, AGAA	1.2
RB, AGB	RB, AGB	1.3
RB, AGB	RA, AGA	1.3
RB, AGB	RAA, AGAA	1.2
RA, AGA	RA, AGA	1.3
RA, AGA	RAA, AGAA	1.2
RAA, AGAA	RAA, AGAA	1.2

Note: Fraction of lots shall not be counted.

Example: Ten lots within an RC donor district are transferred under this chapter to an RB parcel within a receiving district. The RB parcel has suitable acreage under the provisions of Article **XXV** of this chapter for 20 lots. However, the transfer of 10 lots in the RC District to the RB District entitles the RB landowner to a four-lot bonus $[10 \text{ (RC)} \times 1.4 \text{ (assignable credit, § 240-177)} = 14]$. Thus, the total number of lots possible in the RB receiving district under this section is 34:

$$\begin{array}{rcl}
 10 \times 1.4 & = & 14 \text{ from RC donor district} \\
 & + & 20 \text{ from RB District} \\
 & & 34 \text{ total potential lots}
 \end{array}$$

- B. Business or industrial zoned land may act as a receiving district where the total number of attached dwellings will be equal to the number allowed by § **240-177** and the number of units permitted by zoning in the donor district.
[Added STM 10-14-1987, Art. 50]

§ 240-178. Special permit granting authority.

The special permit granting authority for a transfer of development rights special permit shall be the Planning Board. The provisions of MGL C. 40A, §§ 9 and 11 and Article **XLII** of this chapter shall apply to all special permits issued under this Article.

Article XXXVII. Enforcement

§ 240-179. Building Commissioner.

[Amended STM 10-26-1982, Art. 58]

The office of the Building Commissioner is responsible for the enforcement of this chapter. He shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of this chapter and no permit shall be granted for a new use of a building, structure or land which use would be in violation of this chapter. Where a permit or variance may be granted with conditions, such conditions shall be imposed and made part of the record.

§ 240-179.1. Permits.

[Added STM 10-2-1990, Art. 12, approved 1-9-1991]

No permit shall be issued to build a new principal structure on any lot unless the lot has the minimum required frontage on either:

- A. A public way or a way which the Town Clerk certifies is maintained and used as a public way or,
- B. A way shown on a plan approved and/or endorsed in accordance with the subdivision control law or,
- C. A way in existence prior to February 17, 1956, which has been improved to the satisfaction of the Planning Board in respect to having adequate width, grades and construction to provide for the needs of the vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and buildings erected or to be erected thereon.

§ 240-180. Enforcement request.

If the Building Commissioner is requested in writing to enforce this chapter against any person allegedly in violation of same and the Building Commissioner declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefor within 14 days of receipt of such request.

§ 240-181. Titles of officials.

Within this chapter, the designations "Building Inspector" and "Building Commissioner" shall be used interchangeably.

§ 240-182. Plats.

Applications for building permits shall be accompanied by a plat of the lot in duplicate, drawn to scale, showing the actual dimensions of the lot and the exact location and size of the buildings already upon the lot, and of the building or structure to be erected, together with streets and alleys on and adjacent to the lot. A record of such applications and plats shall be kept on file in the office of the Building Inspector.

§ 240-183. Occupancy permit.

- A. No building or structure shall be erected, altered or changed as to construction or use under a permit or otherwise and no premises shall be occupied or used without an occupancy permit signed by the Building Inspector, which permit shall not be issued until the building, structure or premises and its uses and accessory uses comply in all respects with this chapter. A temporary permit may be issued in appropriate cases.
- B. No occupancy permit for full or partial occupancy for projects requiring Planning Board approval shall be issued by the Building Commissioner until he has been notified in writing that the Planning Board is satisfied that the conditions of approval of any site plan review under Article **XXXVIII** or **XXXIX** have been met, or that the Planning Board has received surety for the completion of specific elements to be completed within a specified time frame.

[Added ATM 4-6-1992, Art. 24]

§ 240-184. Penalties.

[Amended STM 10-2-1990, Art. 11, approved 1-9-1991]

- A. Any person violating any of the provisions of this bylaw, including the failure to obtain any required permit, any of the conditions under which any permit was issued or any decision rendered by the Zoning Board of Appeals or any special-permit-granting authority shall be fined not more than \$300 for each offense. Each day that such violation continues shall constitute a separate offense.
- B. In addition to the foregoing, the Building Commissioner or his designee may penalize by using the noncriminal disposition method of enforcement as outlined in Chapter 1, General Provisions, Article I, Penalties, § 1-2, and MGL C. 40, § 21D.

§ 240-185. (Reserved)

[1] *Editor's Note: Former § 240-185, Design Review Committee, added STM 12-12-1990 by Art. 24, as amended, was repealed AFTM 11-14-2016 by Art. 5, approved 2-17-2017.*

Article XXXVIII. Search and Rescue Corridor Overlay District

[1] *Editor's Note: Former Article XXXVIII, Major Plan Review, as amended ATM 4-4-1979, Art. 102, STM 4-9-1980, Art. 25; STM 11-15-1983, Art. 51; ATM 4-7-1986, Art. 69; ATM 4-6-1987, Art. 58; 10-14-1987, Art. 52; ATM 4-3-1989, Art. 45; STM 10-25-1989, Art. 73, was repealed AFTM 11-17-1997, Art. 5, 2-27-1998.*

§ 240-186. Purpose.

The purpose of this district is to preserve three-thousand-foot wide helicopter flight corridors for the USCG Air Station Cape Cod when responding to distress calls during inclement weather.

§ 240-187. Establishment.

For the purposes of this article there is hereby established in the Town of Falmouth the Search and Rescue Overlay District, which is an overlay district superimposed on the zoning districts. This district is depicted on a map entitled: "Search & Rescue Corridor USCG Air Station Cape Cod Emergency Visual Routes," dated June 5, 2007, scale one inch equals 2,000 feet on file with the Town Clerk.

§ 240-188. Height limitation.

Anything in this chapter to the contrary notwithstanding, no building or structure, or part thereof or accessory thereto, shall be constructed, erected, converted or maintained that exceeds 100 feet in height above the ground.

§ 240-189. (Reserved)

§ 240-190. (Reserved)

Article XXXIX. Site Plan Review

[Added ATM 4-1-1985, Art. 59; ATM 4-7-1986, Art. 70; ATM 4-6-1987, Art. 59; ATM 4-5-1989, Art. 44; STM 10-26-1989, Art. 74]

§ 240-191. Purpose.

Each use for which a site plan submission is required is a potentially significant addition to a developing or developed area of the Town, and to a residential, commercial or industrial neighborhood. The purpose of site plan review is to ensure the design and layout of certain developments permitted as a matter of right or by special permit will constitute suitable development and will not result in a detriment to the neighborhood or the environment. The site plan for each use shall be prepared with due consideration for compliance with all applicable sections of this chapter including, but not limited to, all performance requirements under Articles **XXII** to **XXIV**, and parking and loading standards as may be adopted by the Planning Board.

§ 240-192. Applicability.

[Amended AFTM 11-17-1997, Art. 5, approved 2-27-1998; ATM 4-3-2017, Art. 7, approved 6-14-2017]

Any new development or expansion in use, other than one single-family or one two-family residence on a lot which would add 1,000 square feet or more of gross floor area or which would, under the parking schedule Table of Minimum Requirements of § **240-108**, require a total of five or more parking spaces based on both existing and new development; or any change of use which would, under the parking schedule Table of Minimum Requirements of § **240-108**, require five or more parking spaces based only on new development; an accessory apartment allowed as a matter of right or special permit shall be permitted only upon the approval of the Planning Board for site plan review.

§ 240-193. Procedure.

[Amended AFTM 11-18-1996, Art. 12, approved 4-30-1997]

- A. Applications for site plan review shall be filed with the Planning Board as specified in § **300-10** of the Code of Falmouth.
- B. Before approval of a site plan review, the Planning Board shall solicit public comment at the public meeting where the plan is being discussed. Notice that the Board will be accepting public comments shall be given by advertisement in a local newspaper once at least one week prior to the date of the Board's meeting and by notice to abutters within 100 feet of any part of the land of the applicant, by regular mail, at least one week prior to the date of the Board's meeting.
- C. No certificate of occupancy shall be issued until an as-built plan, prepared by a registered land surveyor, professional engineer, or registered landscape architect has been submitted and verified by the Planning Board's designee within seven days of the as-built submittal that all conditions of approval have been met. For reasonable cause the Planning Board or its designee may authorize a temporary or partial certificate of occupancy, where the required work is substantially complete and is adequately assured by a performance guaranty of the

Board's choosing.

[Added ATM 4-8-2019, Art. 17, approved 7-11-2019]

§ 240-194. Action.

[Added AFTM 11-17-1997, Art. 5, approved 2-27-1998]

The Planning Board shall act within 90 days of receiving a complete application for site plan review. Failure by the Planning Board to take final action upon an application shall be deemed to be a granting of the review applied for. The issuing of the site plan review shall require a majority vote of the Board.

[1] *Editor's Note: Former § 240-194, Action, was repealed AFTM 11-18-1996, Art. 12, approved 4-30-1997.*

§ 240-195. Application requirements.

- A. Plans subject to site plan review shall be prepared by a registered architect, landscape architect or professional engineer. The site plan shall be prepared at a scale no greater than one inch = 40 feet, and shall show all existing and proposed buildings, contour elevations, structures, parking spaces, driveway openings, driveways, service areas, facilities for sewage, refuse and other waste disposal and for surface water drainage, landscaping features such as fences, walls, trees and planting areas, walks and lighting. The site plan shall show all resource areas excluded from lot area calculations as described in the definition of Lot Area found in § 240-13, all FEMA V and A Zones and surface water bodies. The applicant shall submit a plan showing only existing conditions when required by the Planning Board. The site plan shall also show the relation of locus map at a scale not greater than one inch = 2,000 feet. The site plan shall also show all contiguous land owned by the applicant or by the owner of the property.

[Amended AFTM 11-17-1997, Art. 5, approved 2-27-1998]

- B. The applicant shall submit such material as may be required regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level and flooding.
- C. The applicant shall submit such material as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets and to screen objectionable features from neighbors. Design features shall include but not be limited to site planning, building placement, building size, design compatibility, exterior appearance, construction materials and finishes, parking and roadways, landscaping and site grading, building entrance and exit placement.

[Amended AFTM 11-17-2014, Art. 5, approved 2-19-2015]

- D. The applicant shall submit such material as may be required regarding the projected traffic flow patterns into and upon the site for both vehicles and pedestrians and an estimate of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.^[1]

[1] *Editor's Note: Former Subsection E, added ATM 4-5-1993 by Art. 25, approved 7-16-1993, which provided for the referral of an application to the Design Review Committee, was repealed AFTM 11-17-2014 by Art. 5, approved 2-19-2015.*

§ 240-196. Access and circulation.

Provisions shall be made for vehicular access to the lot and circulation upon the lot in such a manner as to safeguard against hazards to traffic and pedestrians in the street and upon the lot, to

avoid traffic congestion on any street and to provide safe and convenient circulation in the street and upon the lot. Access and circulation shall also conform to the following:

- A. Where reasonable alternate access is available, the vehicular access to the lot shall be arranged to avoid traffic use of the local residential streets situated in or bordered by residential districts;
- B. Where a lot has frontage on two or more streets, the Planning Board may require that the access to the lot be provided across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians;
- C. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, driveways and traffic controls within the streets;
- D. Access driveways shall be of a design and have sufficient capacity to avoid queuing and entering vehicles on any street;
- E. Driveways into the lot shall have proper grade and alignment as well as transition grades and sight distances, for safe, convenient and efficient access and shall meet the street right-of-way line and travelway of the street in such a manner as to conform to the standard cross section for the street as determined by the Director of the Department of Public Works and the Planning Board;
- F. Where topographic and other conditions are reasonably usable, provision shall be made for circulation driveway connections to adjoining lots of similar existing or potential use. When such driveway connection will facilitate fire protection services and/or when such driveway shall enable the public to travel between two existing or potential uses, open to the public generally, without need to travel upon a street; and
- G. There shall be no more than one driveway connection from any lot to any street, except that separate entrance and exit driveways may be provided where necessary to safeguard against hazards and to avoid congestion and additional driveway connections may be provided, particularly for but not limited to large tracks and uses of extensive scope, if traffic flow in the street will be facilitated by the additional connection. Driveways shall not exceed 24 feet in width at the street line, or such lesser width as will be sufficient to accommodate the traffic to be generated unless a greater width is required by Town bylaw or the Commonwealth of Massachusetts.

§ 240-197. Existing streets.

Where the lot has frontage on an existing street, proper provision shall be made for grading and improvement of shoulders and sidewalk areas within the right-of-way of the street and for provision of curbs and sidewalks.

§ 240-198. Effect of other laws.

This Article **XXXIX** is supplementary of other existing zoning bylaws affecting the access, circulation, design and landscaping of parking areas. Where the application of this Article **XXXIX** imposes a greater restriction than is imposed by other zoning bylaws, the application of this Article **XXXIX** shall control.

§ 240-198.1. Lapse of decision.

[Added AFTM 4-13-1998, Art. 12, approved 6-9-1998]

A site plan review decision issued under this Article shall lapse two years from the date it is granted if a substantial use thereof has not sooner commenced except for good cause. The determination of good cause shall be made by the Planning Board.

Article XL. Zoning Board of Appeals

§ 240-199. Establishment; terms; vacancies.

[Amended AFTM 11-13-2007, Art. 8, approved 2-11-2008; AFTM 11-10-2008, Art. 7, approved 1-6-2009]

There shall be a Zoning Board of Appeals of five members and two associate members appointed by the Board of Selectmen as provided in M.G.L. c. 40A, § 12. The term of office of each member shall be for five years with the terms so arranged that the term of one member expires each year. Vacancies shall be filled for unexpired terms in the same manner as in the case of the original appointments. The Board shall adopt rules not inconsistent with the provisions of this chapter for the conduct of its business, shall file said rules with the Town Clerk and shall make said rules available to the public. Within this chapter, the designations "Zoning Board of Appeals" and "Board of Appeals" shall be used interchangeably.

§ 240-200. Zoning Administrator.

[Added ATM 4-9-1987, Art. 51]

The Board of Appeals is authorized to appoint a Zoning Administrator in accordance with the provision of MGL 40A, § 13. The Board of Appeals may delegate to said Zoning Administrator some of its powers and duties by a concurring vote of all members of the Board of Appeals consisting of three members, and a concurring vote of all except one member of a Board consisting of five members. Any person aggrieved by a decision or order of the Zoning Administrator, whether or not a party to the proceeding, or any municipal office or board, may appeal to the Board of Appeals, as provided in MGL C. 40A, § 14, within 30 days after the decision of the Zoning Administrator has been filed in the office of the Town Clerk. Any appeal, application or petition filed with said Zoning Administrator as to which no decision has been issued within 35 days from the date of filing shall be deemed denied and shall be subject to appeal of the Board of Appeals as provided in C. 40A, § 8.

§ 240-201. Powers.

The Zoning Board of Appeals shall have the following powers:

- A. To hear and decide appeals in accordance with § **240-202**.
- B. To hear and decide applications for special permits upon which the Board is empowered to act. (See Article **XLII**.)
- C. To hear and decide petitions for variances as set forth in Article **XLI**.
- D. To delegate to Zoning Administrator some of its powers and duties, as outlined in § **240-200**.

§ 240-202. Appeals procedure.

- A. An appeal to the Zoning Board of Appeals may be taken by the following parties:

- (1) Any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter or MGL C. 40A.
 - (2) Any person, including an officer or board of the Town of Falmouth or of any abutting City or Town, aggrieved by an order or decision of the Building Commissioner or other administrative officer, in violation of any provisions of this chapter or MGL C. 40A.
 - (3) The Cape Cod Planning and Economic Development Commission.
- B. Such appeal shall be initiated within 30 days from the date of the order or decision which is being appealed, by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk.
- C. The procedures outlined in §§ **240-208**, **240-209**, **240-210** and **240-211** shall be followed for action on appeals, all subject to the requirements of MGL C. 40A.
- D. Any person or board aggrieved by a decision of the Zoning Board of Appeals or any special permit granting authority, whether or not previously a party to the proceeding, may appeal to the Superior Court or other court, under the provisions of MGL C. 40A, § 17.

Article XLI. Variances

§ 240-203. Conditions for granting variances.

The Board of Appeals shall have the power after public hearing notice has been given by publication and posting, and by mailing to all parties in interest, in conformance with the requirements of MGL C. 40A, to grant upon appeal or upon petition with respect to particular land or structures, a variance from the terms of the applicable zoning but only in cases where the Board specifically finds both the following:

- A. Owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant.
- B. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter.

§ 240-204. Requests for alteration, modification or change in use.

- A. No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located, provided, however, that such variance if properly granted prior to the date of adoption of this chapter, may be altered or changed or extended as identified below. [Amended ATM 4-1-1985, Art. 71]
- B. The owner of a lot which use is governed by a properly granted use variance may apply to the Zoning Board of Appeals for an alteration, modification or change of use. Any such alteration, modification or change of use shall reflect the changes in the neighborhood or important planning issues before the Town which have arisen subsequent to the date of the original granting and shall, in the opinion of the Board of Appeals, not be more detrimental than the existing use permitted by variance in the neighborhood. Such requests should only be for modification, alteration or change of use and not for an extension in physical area or an

increase in the intensity of the proposed use from the use originally granted. Such modifications, alterations or changes shall not apply to any land not previously covered by a properly granted variance. Previously granted variances, limited in time, may be extended in the same terms and conditions or on modified terms and conditions as identified above.

§ 240-205. Conditions, safeguards and limitations.

The Board of Appeals may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguard or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

§ 240-206. Lapse of rights.

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, they shall lapse and may be reestablished only after notice and a new hearing pursuant to this Article.

§ 240-207. Fees.

[Amended STM 10-26-1982, Art. 55]

Petition for a variance shall be made to the Town Clerk. The Board of Appeals may require fees, to be paid by the applicant, to cover the cost of advertising, notification by mail and the reasonable cost to the Town in processing a request. Said fee shall be published in the rules and regulations of the Board of Appeals.

§ 240-208. Hearing.

The Board of Appeals shall hold a hearing on any appeal, application or petition transmitted to it by the Town Clerk within 65 days from the transmittal to the Board of such appeal, application or petition. Notices shall be sent and published as required by MGL C.40A, § 15.

§ 240-209. Voting.

[Amended AFTM 11-10-2008, Art. 8, approved 1-6-2009]

The concurring vote of four members of the Board of Appeals shall be necessary to reverse any order or decision of the Building Commissioner or to effect any variance in the application of any bylaw.

§ 240-210. Decision; time limits.

[Amended ATM 4-4-1988, Arts. 39 and 40]

The decision of the Board of Appeals shall be made within 100 days after the date of the filing of an appeal or an extended period of time requested by the applicant. Failure to act within said 100 days shall be deemed to be the grant of the relief, application or petition sought, subject to an applicable judicial appeal as provided in MGL C. 40A, § 17. The petitioner who seeks such approval by reason of the failure of the special permit, appeals or variance granting authority to act within such time prescribed, shall notify the City or Town Clerk, in writing, within 14 days from the expiration of said 100 days or extended time, if applicable, of such approval and that notice has been sent by the

petitioner to parties of interest. The petitioner shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to MGL C. 40A, § 17, and shall be filed within 20 days after the date the City or Town Clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed. After the expiration of 20 days without notice of appeal to the Superior Court, or, if appeal has been taken, after receipt of certified records of the Superior Court indicating that such approval has become final, the City or Town Clerk shall issue a certificate stating the date of approval, the fact that the special permit granting authority failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner.

§ 240-211. When effective.

[Amended ATM 4-4-1988, Art. 41]

No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the City or Town Clerk that 20 days has elapsed after the decision has been filed in the office of the City or Town Clerk and no appeal has been filed or that if such an appeal has been filed, that it has been dismissed or denied, and if it is a variance or special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit or petition for the variance accompanied by the certification of the City or Town Clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed and no appeal has been filed, and that the grant of the application or petition resulting from such failure to act has become final or that if an appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the County and district in which the land is located and indexed in the grantor index under the name of the owner of record is recorded and noted on the owner's certificate of title.

Article XLII. Special Permits

§ 240-212. Applicability.

[Amended STM 10-26-1982, Art. 54]

Specific types of uses, as described in this chapter, shall be permitted only in specified districts upon the issuance of a special permit. Whenever a special permit is required by other sections of this chapter, the Building Commissioner shall issue a building permit and/or use permit only after the application has been approved by the special permit granting authority and the applicant has also obtained all other permits and licenses, whether state, County or municipal, which are prerequisite to his carrying out the proposed use of the premises. Each special permit granting authority may require fees, to be paid by the applicant, to cover the cost of advertising, notification by mail, and the reasonable cost to the Town of processing a request. Said fees shall be published in the rules and regulations of each special permit granting authority.

§ 240-213. Special permit granting authority.

The special permit granting authority shall be the Zoning Board of Appeals unless specifically designated in any section of this chapter to another authorized board or authority as allowed under MGL C. 40A, § 1.

§ 240-214. Filing of application; public hearing.

[Amended ATM 4-4-1988, Art. 42]

Each application for special permit shall be filed by the petitioner with the City or Town Clerk and a copy of said application, including the date and time of filing certified by the City or Town Clerk, shall be filed forthwith by the petitioner with the special permit granting authority. The special permit granting authority shall hold a public hearing, for which notice has been given as provided in MGL C. 40A, § 11, on any application for a special permit within 65 days from the date of filing such application. The effective date of filing is the date the application is concurrently filed with the special permit granting authority and the Town Clerk.

§ 240-215. Action.

[Amended ATM 4-4-1988, Art. 40]

Special permit granting authorities shall act within 90 days following a public hearing for which notice has been given in conformance with the requirements of MGL C. 40A. Failure by the special permit granting authority to take final action upon an application deemed to be a grant of the permit applied for. The petitioner who seeks such approval by reason of the failure of the special permit, appeals or variance granting authority to act within such time prescribed, shall notify the City or Town Clerk, in writing, within 14 days from the expiration of said 90 days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to MGL C. 40A, § 17 and shall be filed within 20 days after the date the City or Town Clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed. After the expiration of 20 days without notice of appeal to the Superior Court, or, if appeal has been taken, after receipt of certified records of the Superior Court indicating that such approval has become final, the City or Town Clerk shall issue a certificate stating the date of approval, the fact that the special permit granting authority failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner.

§ 240-216. Decision.

[Amended ATM 4-5-1984, Art. 61]

In addition to any specific requirements elsewhere in this chapter, or where no specific restrictions are made applicable to a use allowed by special permit, the special permit granting authority shall grant a special permit only upon its written determination that the proposed use will not have adverse effects which overbalance its beneficial effects on either the neighborhood or the Town, in view of the particular characteristics of the site. The provisions of this Article shall not apply to, nor limit in any way, decisions issued under Article **XVII** of this chapter. The determination shall indicate that the proposed use will be in harmony with the general purpose and intent of this chapter and shall include consideration of each of the following:

- A. Adequacy of the site in terms of size for the proposed use;
- B. Suitability of the site for the proposed use;
- C. Impact on traffic flow and safety;
- D. Impact on neighborhood visual character, including views and vistas;
- E. Adequacy of method of sewage disposal, source of water and drainage;
- F. Adequacy of utilities and other public services;
- G. The effect of the proposed project on the adequacy of the supply of affordable housing in the

Town;
[Added ATM 4-3-1989, Art. 52]

- H. The decision of the Planning Board under Article **XXXVIII** or Article **XXXIX** under multiple review; and
[Added STM 10-25-1989, Art. 75]
- I. Compliance with all applicable sections of the zoning bylaws including, but not limited to, all performance requirements under Articles **XXII** to **XXIV**.
[Added STM 10-25-1989, Art. 75]
- J. For those special permits providing affordable housing, the special permit granting authority shall require the following standards be met by conditioning the special permit accordingly:
[Added AFTM 11-9-2009, Art. 11, approved 2-5-2010]
 - (1) The applicant shall comply with the regulations found at 760 CMR 56.03(2), or successor regulations regarding unit inclusion on the subsidized housing inventory.
 - (2) All affordable homeownership units or affordable rental projects shall be governed by a use restriction recorded with the Barnstable County Registry of Deeds. Said restriction shall comply with the provisions of 760 CMR 56.02, or successor regulations. The term of said restriction will be determined by the special permit granting authority taking into consideration: the type of unit being created; whether new construction or rehabilitation; level of affordability; the requirements of any subsidy program or agency.
 - (3) The applicant or successor in interest shall be responsible for providing the following information on an annual basis for affordable rental units, or upon sale of affordable homeownership units.
 - (a) The bedroom size, monthly rent, inclusive of utilities, or sales price.
 - (b) The household size and gross annual household income.
 - (c) Documentation of ongoing compliance with affirmative fair marketing requirements.
 - (d) Documentation shall be provided on an annual basis, for both homeownership and rental affordable units, that each is occupied by a qualified owner or renter, respectively, as a principal residence.
 - (e) Ongoing proof of a current monitoring services agreement with an affordable housing specialist that meets with the special permit granting authority's approval.

§ 240-217. Performance guaranty.

[Added ATM 4-1-1985, Art. 54]

As a condition of the granting of special permits for any uses requiring 20 or more parking spaces as determined by § **240-108** of this chapter, the special permit granting authority shall require that construction and site alteration permitted and specified by said special permit be secured by one, or in part by one and in part by the other, of the following methods, which method may be selected and from time to time varied by the applicant upon receiving written approval from the special permit granting authority:

- A. By a proper bond or deposit of money or negotiable securities sufficient in the opinion of the special permit granting authority to secure performance of the construction of buildings, parking area and appurtenances thereto required for completion of the project as noted in the special permit and shown on any accompanying plans. The special permit granting authority shall

require that said construction shall be completed within a specified period of time; and

- B. By a covenant executed and duly recorded by the owner of record, running with the land, whereby said construction will be completed before such buildings or appurtenances thereto may be eligible for an occupancy permit as required by § **240-183** of this chapter.

§ 240-218. Release of guaranty.

[Added ATM 4-1-1985, Art. 54]

- A. Performance bonds, deposits or covenants may be released in whole or from time to time, in part, when the work has been satisfactorily completed in the opinion of the special permit granting authority and the Town Clerk. The special permit granting authority shall then release the interest of the Town in such bond and return the bond or the deposit to the person who furnished the same or release the covenant by appropriate instrument duly acknowledged which shall be recorded at the Barnstable County Registry of Deeds.
- B. Request for all releases shall be by certified, return receipt letter to the special permit granting authority and the Town Clerk and shall outline that portion of the work to be released and shall be accompanied by an engineer's or surveyor's certification that the work has been done in accordance with the requirements of the granted special permit.
- C. If the special permit granting authority determines that said construction or site alteration has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the Town Clerk, the details wherein said construction or site alteration fails to comply with the special permit, and upon failure so to do within 45 days after the receipt by said Town Clerk of said request by the applicant, all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said forty-five-day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the covenant as aforesaid, the said Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

§ 240-219. Referral.

[Amended STM 4-9-1980, Art. 25; ATM 4-1-1985, Art. 53]

- A. In addition to those applications for a special permit which require major plan review under Article **XXXVIII**, the Board of Appeals, Board of Selectmen and Planning Board shall refer a special permit application to the Board of Health, Conservation Commission, Planning Board and the Department of Public Works Water and Engineering Divisions for written comments and recommendations before taking final action on said special permit application. In addition to the above noted Boards, a special permit granting authority may refer a special permit application to any other Town agency/board/department for comments and recommendations if it so desires before taking final action on said special permit application. A public hearing on said referral shall not be required.
- B. Any such board or agency to which applications are referred for comment shall make its recommendations and send copies thereof to the special permit granting authority and the applicant within 35 days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The special permit granting authority shall not act upon said special permit until either comments from referred boards or agencies have been received, or said 35 days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by said boards or agencies.

§ 240-220. Multiple review.

[Added STM 10-25-1989, Art. 75]

- A. If it is determined by the Building Commissioner that a structure or use requires multiple review under either Article **XXXVIII** or **XXXIX** and any special permit review from any special permit granting authority, the applicant shall submit materials to both Boards according to their requirements within seven days of each other.
- B. Under multiple review, the Planning Board shall schedule a public hearing for a plan requiring Article **XXXIX** review within 30 days of receiving the application and shall file the findings of their review with the Building Commissioner within 60 days after the public hearing. Time requirements for multiple review under Article **XXXVIII** shall remain as before.
- C. Any structure or use which requires multiple review shall not receive a building permit until a plan review has been filed with the Building Commissioner under Article **XXXVIII** or **XXXIX**.

§ 240-221. Lapse.

[Amended ATM 4-1-1991, Art. 22; AFTM 11-6-2017, Art. 15, approved 2-12-2018]

A special permit granted under this Article shall lapse three years from the date it is granted if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if the construction has not begun by such date, except for good cause. The determination of good cause shall be made by the special permit granting authority.

§ 240-222. Effective date.

[Amended ATM 4-4-1988, Art. 41]

See § **240-211**.

Article XLIII. Amendments

§ 240-223. Procedure.

[Amended ATM 4-8-1981, Art. 59; ATM 4-4-2007, Art. 9, approved 5-21-2007]

No amendment to this chapter shall be made except by a two-thirds vote of Town Meeting and only after the zoning article is properly submitted and a public hearing is held by the Planning Board in accordance with the procedures of MGL c. 40A, § 5. Any person filing a petition for an amendment to the Zoning Bylaws and/or Zoning Map shall be liable for a filing fee. Said filing fee shall be published in the rules and regulations of the Planning Board and shall be equal to the cost of publication of the required public notice.

§ 240-224. Repetitive action.

No proposed amendment which has been unfavorably acted upon by Town Meeting shall be considered by Town Meeting within two years after the date of such unfavorable action unless the adoption of such bylaw is recommended in the final report of the Planning Board.

§ 240-225. Notices.

[Added STM 10-15-1987, Art. 59; amended ATM 4-4-2007, Art. 9, approved 5-21-2007; ATM 4-8-2019, Art. 18, approved 7-11-2019]

Amendments to any district of the Official Zoning Map shall require that notice of the Planning Board public hearing required by MGL c. 40A, § 5, be sent by postage prepaid, to all parties in interest in accordance with MGL c. 40A, § 11, when those amendments involve the rezoning of 10 or fewer parcels of land. When greater than 10 parcels of land are proposed for rezoning, notice shall be accomplished by publishing a map in the local newspaper together with the public hearing notice required by MGL c. 40A, § 5.

§ 240-226. Effective date.

The effective date of an amendment to this chapter, subject to its approval by the Attorney General as required by MGL C. 40A, is the date on which such amendment was voted by Town Meeting.

§ 240-227. Continuance of former bylaw; repealer.

The provisions of this chapter, so far as they are the same as those of existing bylaws, shall be construed as continuations thereof and not as new enactments. A reference in a bylaw, which has not been repealed, to provisions of bylaws which are revised and reenacted therein shall be construed as applying to such provisions as so incorporated herein. All bylaws or parts of bylaws heretofore passed, inconsistent herewith, are hereby repealed.

Article XLIV. Miscellaneous

§ 240-228. Severability.

The provisions of this chapter are severable from each other and the invalidity of any provision or section shall not invalidate any other provision or section thereof.

Article XLV. Adult Uses

[Added ASTM 4-7-1997, Art. 11, approved 7-1-1997]

[1] *Editor's Note: Former Article XLV, Bournes Pond Dock, Pier and Float Moratorium, added AFTM 11-14-1994, Art. 4, expired 11-1-1996.*

§ 240-229. Intent and purpose.

The intent of the bylaw is to regulate the locations of adult uses in order to lessen the harmful secondary effects on adjacent areas. These secondary effects, which are documented in various studies of towns comparable in size and composition to Falmouth, include an increase in crime, a decline in property values, a flight of existing businesses and gradual blight of residential neighborhoods. The purpose of the Adult Use Bylaw is to prevent crime, maintain property values, protect the Town's retail trade and protect and preserve the quality of residential neighborhoods. The bylaw does not prohibit adult uses, but rather provides reasonable alternative avenues of expression throughout the Town.

§ 240-230. Special permit requirements.

Adult uses as defined in Article III, Definitions, of the Zoning Bylaw are allowed by special permit through the Board of Appeals in Light Industrial A and Business 2 Zoning Districts. Adult uses must comply with the following requirements in addition to the requirements in Article XLII, Special Permits:

- A. Dimensional requirements. The proposed adult use must comply with the following minimum distance separations:
 - (1) A minimum 4,000 foot separation is required from any other adult use.
 - (2) A minimum 600 foot separation is required from the adult use structure to existing residential uses and districts; educational uses; religious uses; public beaches; and public active recreation facilities, including school athletic fields and facilities, Town parks, and the Gus Cauty Recreation Center/Fuller Field complex, as documented in Table 4 of the Town's Open Space Element.
 - (3) A minimum 500 foot separation is required from any establishment licensed under the provisions of MGL c. 138, § 12.
 - (4) A 20 foot vegetative buffer containing adequate screening given the character of the neighborhood and the intensity of the use shall be provided between adult uses and abutting commercial uses.
- B. Other requirements.
 - (1) Adequate provisions for security provided by public safety officers must be documented.
 - (2) The applicant or owner must disclose if they have been convicted of violating the provisions of MGL c. 119, § 63, or MGL c. 272, § 28. A special permit shall not be issued to any person convicted of violating the provisions of MGL c. 119, § 63 or MGL c. 272, § 28. The applicant is to disclose any and all involvement with other adult uses in the Town.
 - (3) No signs, pictures, publications, videotapes, movies or other advertising that fall within the definition of adult use or are erotic, prurient or related to violence, sadism or sexual exploitation shall be displayed in the windows of, or on the building of any adult use, or be visible to the public from the pedestrian sidewalks or walkways or from other public or semipublic areas outside such establishments.
 - (4) Any commercial establishment or activity that promotes or portrays, under the guise of entertainment or education, sexual abuse of or by or among men, women and children, and any such abuse that threatens their health and the health of a community shall not be granted a permit in the Town of Falmouth. Furthermore, any such commercial establishment or activity that violates the community standards of said Town shall not be granted a permit in the Town of Falmouth.
- C. Procedures. Adult use special permits shall only be issued following public hearings held within 65 days after filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the Town Clerk by the applicant. The special permit granting authority shall act within 90 days following the close of a public hearing for which notice has been given by publication or posting as provided in MGL c. 40A, § 11, and by mailing to all parties in interest. Failure by a special permit granting authority to take final action upon an application for a special permit within said 90 days following the date of public hearing shall be deemed to be a grant of the permit applied for. Special permits issued by a special permit granting authority shall require a concurring vote of four members of a five-member board.
[Amended AFTM 11-10-2008, Art. 9, approved 1-6-2009]

D. Lapse.

- (1) Notwithstanding the provisions of § **240-221**, a special permit granted under this article shall lapse after one year, and including such time required to pursue or await the determination of an appeal referred to in MGL c. 40A, § 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if the construction has not begun by such date, except for good cause. The determination of good cause shall be made by the special permit granting authority.
- (2) A special permit issued under this Article shall lapse upon any transfer of ownership or legal interest or change in contractual interest in the subject premises or property. The special permit may be renewed thereafter only in accordance with § **240-230C**, Procedures, above.

§ 240-231. (Reserved)

§ 240-232. (Reserved)

§ 240-233. (Reserved)

§ 240-234. (Reserved)

§ 240-235. (Reserved)

§ 240-236. (Reserved)

§ 240-237. (Reserved)

§ 240-238. (Reserved)

§ 240-239. (Reserved)

Article XLVI. Business Redevelopment

[Added AFTM 11-8-2004, Art. 3, approved 12-30-2004]

§ 240-240. Business Redevelopment District.

- A. Purpose. The purpose of this article is to promote the revitalization of commercial centers using mixed-use redevelopment integrating retail, office, restaurant and community service uses with housing, such as second floor apartments, condominiums and townhomes. This redevelopment fosters pedestrian-friendly streetscapes by requiring rear and side yard parking,

allowing shared parking between businesses and uses, reducing and consolidating curb cuts, and allowing parking reductions in exchange for on-site green space. The district also relaxes front, side and rear yard setbacks to encourage sidewalk development and pedestrian-friendly storefronts to offer streetside gathering places in front of redeveloped properties, rather than front yard parking fields.

B. Permitted mixed uses (residential/commercial uses).

(1) Section **240-18.1** notwithstanding, any combination of permitted community service, business and commercial uses together with residential uses under six (6) units per acre with the following criteria:

(a) Commercial or community service uses must be present within at least the first story space within any mixed-use structure sited within one hundred (100) feet of the street frontage.

[Amended AFTM 11-15-2010, Art. 3, approved 12-13-2010]

(b) Any new mixed use construction with a proposed gross floor area of ten thousand (10,000) square feet or more requires a special permit from the Planning Board. Therefore Subsection **G(2)(a)** will not apply to new commercial construction incorporating residential uses.

(c) Permitted residential uses:

[1] One-, two- and three-family dwellings.

C. (Reserved)

D. Permitted community service uses.

(1) Churches, schools, libraries, museums, educational, research and philanthropic institutions, cemeteries.

(2) All municipal purposes, including the administration of government, parks, playgrounds, recreation buildings, Town forests, water towers, fire and police stations.

E. Permitted business and commercial uses.

(1) Retail sales not more specifically listed only if each establishment occupies no more than four thousand (4,000) square feet gross floor area.

(2) Business or professional offices, bank, medical clinic, computer center.

(3) Personal and household services only if each establishment occupies no more than four thousand (4,000) square feet gross floor area.

(4) Class I or Class II restaurants.

F. Permitted accessory uses. Such accessory uses as are customarily incidental to any of the above uses except that the outdoor display and/or storage of goods and merchandise for sale is permitted beyond the front yard setback only when such display and/or storage is wholly incidental and secondary to a primary use conducted within the permanent structure on the lot. No such display and/or storage may occur in delineated parking spaces, traffic lanes, crosswalks, sidewalks and front yards.

G. Special permit uses:

(1) Uses allowed on special permit from the Board of Appeals:

- (a) Commercial accommodations. (See Article **XXVII**.)
- (b) Multifamily use greater than six (6) units per acre, up to eight (8) units/acre if the Board of Appeals finds: that the public good will be served; that the business zoned area would not be adversely affected; and that the uses permitted in the zone would not be noxious to a multifamily use.
[Amended STM 4-3-2012, Art. 4, approved 5-4-2012]
- (c) The outdoor display and/or storage of goods and merchandise for sale other than as permitted under Subsection **F**. The issues raised in Subsection **F** shall be issues to be considered in addition to those specified in § **240-216**.
- (d) Any change, alteration, modification, or addition to an existing business or commercial shopping center that would result in a building with a gross floor area of ten thousand (10,000) square feet or more.
- (e) Motor vehicle service stations.
- (f) Nursing homes.
- (g) Class III restaurant.
- (2) Uses allowed on special permit from the Planning Board:
 - (a) Any new construction of a business or commercial shopping center with a proposed gross floor area of seven thousand (7,000) square feet or more.
 - (b) Any new mixed use construction with a proposed gross floor area of ten thousand (10,000) square feet or more.
- H. Dimensional requirements.
 - (1) Minimum lot size: twenty thousand (20,000) square feet.
 - (2) Minimum lot width: one hundred twenty-five (125) feet.
 - (3) Maximum lot coverage by structures, paving and parking: sixty percent (60%).
 - (4) Maximum lot coverage by structures: twenty percent (20%).
 - (5) Maximum building height: 2 1/2 stories, not to exceed thirty-five (35) feet.
[Amended AFTM 11-12-2019, Art. 5, approved 2-13-2020]
 - (6) Minimum setbacks:
 - (a) Front yard: twenty (20) feet.
 - (b) Side yard/rear yard: ten (10) feet.
 - (7) Minimum frontage: one hundred (100) feet.
[Amended ATM 4-11-2005, Art. 25, approved 5-9-2005]
- I. Site plan requirements. One (1) curb cut shall be allowed by right per lot with Main Street frontage. One (1) curb cut shared between abutters is preferable. The Planning Board under site plan review may grant exceptions if two (2) curb cuts are absolutely necessary to access parking facilities or to reduce traffic impacts on a given site.
- J. Parking requirements.

- (1) Parking shall be provided as per Article **XXII**, Parking Requirements, of the Zoning Bylaw. All parking shall be located in side or rear yards behind the front facade line of the building, the exact location to be determined by the Planning Board under site plan review. However, the number of the required parking spaces may be altered by the Planning Board under site plan review for uses allowed as a matter of right, or by the special permit granting authority for uses allowed by special permit in the following manner:
 - (a) Number of spaces: may be reduced for mixed use developments at the discretion of the Planning Board based on the number of uses that are complementary in days and hours of operation. Parking may also be reduced if pedestrian amenities both on-site and between properties and the street line are incorporated into the site planning. In no case shall parking be reduced below fifty percent (50%) that is required pursuant to Article **XXII** unless by special permit; the Board of Appeals allows for such pursuant to § **240-107B**.
 - (b) Location of spaces: Parking may be located off premises if shared parking between businesses or uses can be demonstrated via long-term agreements, leases, and licenses of five (5) years or more and to the satisfaction of the Planning Board or Board of Appeals as the case may be. Shared parking shall not be allowed that is more than three hundred (300) feet from the property line.

(2) Definitions.

FRONT FACADE LINE

A line even with the front facade of a building extending out to the side property lines delineating the front and side yards on a site for site design purposes.

§ 240-241. through § 240-249. (Reserved)

Article XLVII. Marijuana Treatment Centers

[Added ATM 4-7-2014, Art. 7, approved 5-13-2014]

§ 240-250. Purpose; definitions; special permit criteria.

Purpose; definitions; special permit criteria.

- A. Purpose. This article defines permitting requirements and standards for medical marijuana treatment centers, also known as "registered marijuana dispensaries," which are consistent with the regulations adopted for such facilities by the Cannabis Control Commission. 935 CMR 501.00 contains additional definitions and regulations relative to the registration, establishment, operations and regulation of such centers/dispensaries, as well as hardship cultivation registration by the Cannabis Control Commission. Nothing in this chapter is intended to regulate or prohibit uses or activities under a hardship cultivation registration.

[Amended ATM 4-8-2019, Art. 19, approved 7-11-2019]

- B. Definitions:

MARIJUANA-INFUSED PRODUCT (MIP)

A product infused with marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils, and tinctures.

MEDICAL MARIJUANA TREATMENT CENTER/REGISTERED MARIJUANA DISPENSARY

An entity registered under the Cannabis Control Commission 935 CMR 501.000 or its

successor legislation (previously under 105 CMR 725.100) that acquires, cultivates, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, including development of related marijuana-infused product (MIP), related supplies, or educational materials to registered qualifying patients or their registered personal caregivers.

[Amended ATM 4-8-2019, Art. 19, approved 7-11-2019]

QUALIFYING PATIENT

A Massachusetts resident 18 years of age or older who has been diagnosed by a Massachusetts licensed healthcare provider as having a debilitating medical condition, or a Massachusetts resident younger than 18 years old who has been diagnosed by two Massachusetts licensed certifying physicians, at least one of whom is a board-certified pediatrician or board-certified pediatric subspecialist, as having a debilitating medical condition that is also a life-limiting illness, subject to 935 CMR 501.010(J).

[Amended ATM 4-8-2019, Art. 19, approved 7-11-2019]

- C. Permitting. Marijuana treatment center/registered marijuana dispensary shall be a use allowed subject to the issuance of a special permit by the Planning Board, as provided for in this chapter, in Business 2 Zoning Districts only.
- D. Special permit criteria - standards. In addition to the requirements for the issuance of a special permit found in § **240-216** of the Zoning Bylaw, any such marijuana treatment center/registered marijuana dispensary shall:
 - (1) Not be located within 500 feet of a public or private kindergarten, primary or secondary school, a place of worship, a day nursery, nursery school or a public park or playground. No other specific separation requirements will apply.
 - (2) Be approved for operation, or remain in operation, with a certificate of registration issued by the Cannabis Control Commission or successor agency.
[Amended ATM 4-8-2019, Art. 19, approved 7-11-2019]
 - (3) Be compliant at all times with the security measures required by 935 CMR 501. A description of such measures, including any updates, shall be provided to the Falmouth Police Department, along with after-hours contact information. Any other provisions of this chapter regarding required landscaping or vegetated buffers notwithstanding, trees, bushes and other foliage located on the site outside of the center/dispensary shall be located (or removed) so they do not allow for a person or persons to conceal themselves from sight within 50 feet of any entrance or of any parking space designated to be utilized by registered qualifying patients, personal caregivers, and dispensary agents of the center/dispensary.
[Amended ATM 4-8-2019, Art. 19, approved 7-11-2019]
 - (4) Be in compliance with 935 CMR 501.105 and cultivation, production, preparation, transport or analysis shall be done in a manner to prevent diversion, theft or loss. All phases of the cultivation of marijuana shall take place in designated, locked, limited access areas that are monitored by a surveillance camera system in accordance with 501.110(4)(a)(4) through (9).
[Amended ATM 4-8-2019, Art. 19, approved 7-11-2019]
 - (5) Adopt emergency procedures, including a plan with procedures to be followed in case of fire or other emergencies, copies of which shall be filed with the Police and Fire Departments.
 - (6) Provide parking applicable to retail establishments for that portion of the floor area designated for sales, and to manufacturing or other industrial buildings for floor area designated for storage or for cultivation of marijuana or preparation of MIPs.

- (7) Be in compliance with 935 CMR 501.105(12) regarding marketing, advertising and signs.
[Amended ATM 4-8-2019, Art. 19, approved 7-11-2019]

Article XLVIII. Large-Scale Ground-Mounted Solar Overlay District

[Added 11-13-2018 FATM, Art. 8, approved 2-21-2019]

§ 240-251. Purpose.

- A. The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar installations and shall follow the guidelines set forth in the MA DOER/MA DEP/Mass CEC Clean Energy Results Ground Mounted Solar PV Systems dated June 2015, as amended to the most current guideline.

- B. Definitions.

AS-OF-RIGHT SITING

That development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development shall be subject to site plan review, §§ **240-191** through **240-198.1**, to determine conformance with local zoning bylaws. Projects cannot be prohibited, but can be reasonably regulated by the Building Commissioner.

LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION

A solar energy system that is structurally mounted to the ground and is not roof mounted; that occupies more than 40,000 square feet of surface area (equivalent to a rated nameplate capacity of about 250kW DC or greater).

RATED NAMEPLATE CAPACITY

The maximum rated output of electric power production of the photovoltaic system in watts of direct current (DC).

SOLAR ENERGY SYSTEM

A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

§ 240-252. General requirements for all large-scale solar power generation installations.

The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

- A. Compliance with laws, ordinances and regulations. The construction and operation of all large-scale solar photovoltaic installations shall be consistent with all applicable local, state and

federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar energy system shall be constructed in accordance with the State Building Code.

- B. Building permit and building inspection. No large-scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.
- C. Fees. The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit.
- D. Site plan review. Ground-mounted large-scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review by the Planning Board prior to construction, installation or modification as provided in this section. Said site plan approval shall be an "expedited" application and permitting process under which said facilities may be sited within one year from the date of initial application to the date of final approval by the Planning Board.
- E. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.

§ 240-253. Required documents.

Pursuant to the site plan review process, the project proponent shall provide the following documents, as deemed applicable by the Planning Board:

- A. A site plan showing:
 - (1) Property lines and physical features, including roads, for the project site;
 - (2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - (3) Blueprints or drawings of the solar energy system signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system, any potential shading from nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
 - (4) One- or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electric Code (527 CMR 12.00) compliant disconnects and overcurrent devices;
 - (5) Documentation of the major system components to be used, including the panels, mounting system, inverter and storage batteries;
 - (6) Name, address, and contact information for proposed system installer;
 - (7) Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 - (8) The name, contact information and signature of any agents representing the project proponent; and
 - (9) Zoning district designation for the parcel(s) of land comprising the project site.

- (10) Locations of active farmland and prime farmland soils, wetlands, permanently protected open space, Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage and Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the DEP.
- (11) Locations of floodplains or inundation areas for moderate or high hazard dams;
- (12) Locations of local or National Historic Districts;
- B. Site control. The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar energy system.
- C. Operation and maintenance plan. The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar energy system, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.
- D. Proof of liability insurance; and
- E. A public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required site plan review notification procedures and otherwise inform abutters and the community as required in § **240-193B**.
- F. Utility notification. No photovoltaic system shall be installed until evidence has been given to the Planning Board that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer owned generator.
- G. Description of financial surety that satisfies § **240-255C** below.

§ 240-254. Site plan review design and operation standards.

- A. Minimum lot size: seven acres.
- B. Dimensional requirements. Front, side and rear setbacks shall be as follows:
 - (1) Front yard: The front yard depth shall be at least 100 feet from the road right-of-way and maintained as a no-disturb zone except for the provision of a site access drive.
 - (2) Side yard: Each side yard shall have a depth at least 35 feet; provided, however, that where the lot abuts a Residence or Agriculture District, the side yard shall not be less than 100 feet and maintained as a no-disturb zone.
 - (3) Rear yard: The rear yard depth shall be at least 35 feet; provided, however, that where the lot abuts a Residence or Agriculture District, the rear yard shall not be less than 100 feet and maintained as a no-disturb zone.
- C. All structures accessory to ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. Multiple accessory structures shall be clustered to the greatest extent feasible and views of such structures to residential properties and roadways shall be screened with landscaping.
- D. Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of solar energy system or otherwise prescribed by applicable laws, regulations, and bylaws.

- (1) Not more than two acres of forest land shall be deforested for any one ground-mounted solar photovoltaic installation, and no such installation shall be placed on such land that was deforested within the prior five years.
 - (2) Land clearing in excess of two contiguous acres in connection with any single installation is prohibited.
 - (3) No such installation shall be segmented or broken into separate ownerships so as to avoid the prohibitions of Subsection **D(1)** and **(2)** above.
- E. Lighting of large-scale ground-mounted solar energy systems shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar energy system shall be directed downward and shall incorporate full cutoff fixtures to reduce light pollution.
- F. Signage. Signs on large scale ground mounted solar energy systems shall comply with a municipality's sign bylaw. A sign consistent with a municipality's sign bylaw shall be required to identify the owner and provide a twenty-four-hour emergency contact phone number. Solar energy systems shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar energy system.
- G. Utility connections. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be aboveground if required by the utility provider.
- H. Emergency services. The large-scale ground-mounted solar energy system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar energy system shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
- I. Monitoring and maintenance. The large-scale ground-mounted solar energy system owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Chief of the Fire/Rescue Department. The owner or operator shall be responsible for the cost of maintaining the solar energy system and any access road.
- J. Modifications. All material modifications to a large-scale ground-mounted solar energy system made after issuance of the required building permit shall require approval by the Planning Board.

§ 240-255. Site abandonment or decommissioning.

- A. Removal requirements. Any large-scale ground-mounted solar energy system which has reached the end of its useful life or has been abandoned consistent with § **240-255** of this bylaw shall be removed. For a scheduled decommissioning, the owner shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning shall consist of:

- (1) Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.
 - (2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
 - (3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- B. Abandonment. The cessation of a solar energy system accompanied by an intent to abandon and voluntary conduct whether affirmative or negative. Time is not a controlling factor of abandonment, although the lapse of time may be evidence of an intent to abandon, and where it is accompanied by acts of abandonment, it may be considered in determining whether there has been abandonment. Abandonment may arise from a single act or a series of acts. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town retains the right to enter and remove an abandoned, hazardous, or decommissioned large scale ground mounted solar energy system in accordance with applicable laws. As a condition of Site Plan approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.
- C. Financial surety. Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125% of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.